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

People of the State of California, )  
 )  
 ) Plaintiff, )  
 )  
 ) vs. )  
 )  
 ) Richard Quigley, )  
 )  
 ) Defendant. )  
 \_\_\_\_\_ )

Case No.: \_\_\_\_\_

**POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION TO  
SUPPRESS  
(PC 1538.5)**

**POINTS AND AUTHORITIES**

Defendant submits the following points and authorities in support of the motion to suppress evidence as follows:

I.

**A DEFENDANT MAY MOVE TO SUPPRESS AS EVIDENCE OF ANY TANGIBLE OR INTANGIBLE THING OBTAINED AS A RESULT OF AN UNREASONABLE SEARCH OR SEIZURE**

**Penal Code § 1538.5 provides in part:**

The grounds for suppressing evidence obtained as a result of an unreasonable search or seizure are:

- “(1) The search or seizure without a warrant was unreasonable; or
- (2) . . .” (PC1538.5)

1 The Burden of Proof Showing Reasonable Cause rests upon the People:

2 “The burden of showing reasonable cause for an arrest without a  
3 warrant rests upon the prosecution.” *People v Satterfield* (1967) 252  
4 CA2d 270, 60 Cal Rptr 733.

5 “The burden of showing justification for an arrest made without  
6 warrant is on the prosecution, and since the court and not the officer  
7 must make the determination whether the officer’s belief was based  
8 upon reasonable cause, the officer must testify to the facts or  
9 information known to him on which his belief was based.” *People v*  
10 *Duarte* (1967) 254 CA2d 25, 61 Cal Rptr 690, cert den 390 US 971, 19  
11 L Ed 2d 1181, 88 S Ct 1091.

12 “. . . simple ‘good faith on the part of the arresting officer is not  
13 enough.’ . . . If subjective good faith alone were the test, the  
14 protections of the Fourth Amendment would evaporate, and the  
15 people would be ‘secure in their persons, houses, papers, and effects,’  
16 only in the discretion of the police.” *Beck v. Ohio*, 379 U.S. 89 (1964).

17 The courts have ruled, repeatedly, on the elements of the offenses charged —  
18 alleged violations of CVC 27803. According to these rulings, there is no way the  
19 requisite evidence to support the filing of a complaint was available to the citing of-  
20 ficer at the time the complaint was filed than there is today.

21 **A. Standard of Evidence Required to Justify the Issuance of a Complaint against**  
22 **the Defendant for violating CVC 27803(b).**

23 The defendant is charged with an alleged violation of CVC §27803(b) which  
24 reads as follows:

25 (b) It is unlawful to operate a motorcycle, motor-driven cycle, or  
26 motorized bicycle if the driver or any passenger is not wearing a  
27 safety helmet as required by subdivision (a).

28 / / /

1 In turn, CVC §27803(a) states:

2 (a) A driver and any passenger shall wear a safety helmet meeting  
3 requirements established pursuant to Section 27802 when riding on  
4 a motorcycle, motor-driven cycle, or motorized bicycle.

5 If the statute is not in any way vague or unenforceable, then the next step in  
6 determining whether or not the defendant has violated the statute should be easy . . .

7 CVC §27802 reads:

8 (a) The department may adopt reasonable regulations establishing  
9 specifications and standards for safety helmets offered for sale, or  
10 sold, for use by drivers and passengers of motorcycles and motorized  
11 bicycles as it determines necessary for the safety of those drivers and  
12 passengers. The regulations shall include, but are not limited to, the  
13 requirements imposed by Federal Motor Vehicle Safety Standard  
14 No. 218 (49 C.F.R. Sec. 571.218) and may include compliance with  
15 that federal standard by incorporation of its requirements by refer-  
16 ence. Each helmet sold or offered for sale for use by drivers and  
17 passengers of motorcycles and motorized bicycles shall be conspicu-  
ously labeled in accordance with the federal standard which shall  
constitute the manufacturer's certification that the helmet conforms  
to the applicable federal motor vehicle safety standards.

18 (b) No person shall sell, or offer for sale, for use by a driver or  
19 passenger of a motorcycle or motorized bicycle any safety helmet  
20 which is not of a type meeting requirements established by the  
department.

21 Department as used in section 27802 refers to the Department of the  
22 California Highway Patrol. (ss 290, 24000.)

23 Relative to how a rider was to figure out what all that means, the 4th Appellate  
24 Court of California, in the case of *Buhl v. Hannigan*, wrote:

25 “ . . . the proposition that the statute requires the consumer or  
26 enforcement officer to decide if the helmet is properly fabricated . .  
27 . is *absurd*. When sections 27802 and 27803 are harmonized, as they  
28 must be (*Bowland v. Municipal Court* (1976) 18 Cal.3d 479, 489, 134

1 Cal.Rptr. 630, 556 P.2d 1081), it is clear the law requires only that the  
2 consumer wear a helmet bearing a *certification of compliance*.”<sup>1</sup>  
3 *Buhl v. Hannigan*, 16 Cal.App 4th 1612, 20 Cal.Rptr.2d 740 (empha-  
4 sis added).

5 In other words, the statutes cannot, because they do not, require either the  
6 defendant or the citing/prosecuting officer to determine proper helmet fabrication.  
7 The mere proposition that such would be the case is, in the words of the Appellate  
8 Court, “absurd”!

9 **B. The Evidence Code speaks to the effect of the self-certification of compliance.**  
10 **Evidence Code §602**

11 **Statute making one fact prima facie evidence of another fact**  
12 **A statute providing that a fact or group of facts is prima facie**  
13 **evidence of another fact establishes a rebuttable presumption.**

14 Thus, according to the Rules of Evidence §602, in light of the *Buhl* decision,  
15 the defendant is entitled to the “rebuttable presumption” that his helmet was and is in  
16 compliance with the statute based on the presence of the letters “DOT” which are

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17 1 What’s a “certification of compliance”?

18 The courts, subsequent to the *Buhl* court, have  
19 reached the opinion that a “DOT sticker” signifies that  
20 a manufacturer has certified the helmet as being in  
21 compliance with FMVSS 218, to wit:

22 **“The federal statutory scheme contemplates**  
23 **an honor system in which manufacturers**  
24 **comply with detailed federal performance**  
25 **standards for motor vehicle equipment**  
26 **through self-certification. If a manufacturer**  
27 **determines that its helmet conforms to the**  
28 **federal standards and certifies that conform-**  
**ity by labeling the helmet with a DOT self-**  
**certification sticker, it is legal to sell that**  
**helmet under the federal law and it is legal**  
**under California law to drive a motorcycle**  
**while wearing that helmet until such time as**  
**that helmet has been shown not to conform**  
**to the federal standards.”** *Bianco v. CHP*

29 However, the vehicle codes has something to say  
30 about that which the court did not: Vehicle Code §246  
31 states:

32 **“A "certificate of compliance" for the pur-**  
33 **poses of this code is a document issued by a**  
34 **state agency, board, or commission, or au-**

35 **thorized person, setting forth that the re-**  
36 **quirements of a particular law, rule or regu-**  
37 **lation, within its jurisdiction to regulate or**  
38 **administer has been satisfied”**

The defendant certainly qualifies as an “authorized  
person,” and could most certainly have certified compli-  
ance of his helmet with the requirements of FMVSS  
218 -- particularly as they apply to him.

Evidence of this authorization resides in the origi-  
nal language of the statute, later deleted by a 1967  
amendment that deleted, in part, the following lan-  
guage:

39 **“A ‘certificate of compliance’ is a certifi-**  
40 **cate issued by the department, upon filing**  
41 **‘proof of ability to respond in damages’ . . .**  
42 **.”**

This original language makes it clear that the  
certification requirement is for the purpose of estab-  
lishing product liability -- *he who certifies, indemni-*  
*fies*. That's the entire foundation of the elusive (self-  
certification) process -- to assign product liability.

So, even if it were ultimately shown that defendant's  
helmet was not certified by some other party pursuant  
to VC 246, the defendant has not waived his right to  
assume product liability and self-certify it, himself.

1 plainly visible on the rear portion of his helmet.<sup>2</sup>

2 However, as the courts well know, nothing is rarely as easy as it should be  
3 (particularly when everybody is running from liability).

4 Evidence Code § 606. “Effect of presumption affecting burden of proof  
5 “The effect of a presumption affecting the burden of proof is to impose upon the party  
6 against whom it operates the burden of proof as to the nonexistence of the presumed fact.”

7 In establishing the extent of the burden that the rebuttable presumption the  
8 letters “DOT” on the defendant’s helmet impose, the *Bianco* court wrote:

9 **“3 . . . We conclude the statement in Buhl that consumer compliance  
10 with the state law only requires the consumer to wear a helmet  
11 bearing the DOT self-certification sticker does not apply when a  
12 helmet has been shown not to conform with federal standards and the  
13 consumer has actual knowledge of this fact. “ *Bianco v. CHP* 24  
14 Cal.App.4th 1113, 29 Cal.Rptr2d 711**

15 The burden on the prosecution then becomes one of climbing over the “re-  
16 buttable presumption” created by the existence of the letters “DOT” on the  
17 defendant’s helmet. The burden is on the prosecution to prove beyond a reasonable  
18 doubt that the defendant’s helmet had not been self-certified by the “manufacturer”<sup>4</sup>

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19 2 Since the defendant’s helmet is designed to be worn  
20 with the sun visor toward the direction he is traveling,  
21 or toward the direction from which he came; the  
22 whereabouts of the lettering must be viewed in light of  
23 the design of the helmet when worn with the visor  
24 portion of the helmet over the wearer’s eyes — which  
25 would put the portion of the helmet bearing the letters  
26 “DOT” at the back of the rider’s head, which it did and  
27 does.

28 3 “. . . the federal statutory safety scheme, which the  
mandatory helmet law follows, contemplates an honor  
system in which manufacturers comply with detailed  
federal performance standards through self-certifica-  
tion. If a manufacturer determines that its helmet  
conforms to federal standards and certifies that confor-  
mity by labeling the helmet with a Department of  
Transportation self-certification sticker, it is legal to

sell that helmet under federal law and legal under  
California law to drive a motorcycle while wearing that  
helmet until such time as that helmet has been shown  
not to conform to federal standards. Once a helmet has  
been shown not to conform, the presumption of com-  
pliance is rebutted.” (*Ibid.*)

Thus, a helmet manufacturer’s self-certification cre-  
ates a “rebuttable presumption” that the helmet meets  
safety requirements, putting the burden on the alleging  
party to prove that a given helmet, once so certified is  
not, or at no other time was, compliant.

4 How does that work? What’s a “manufacturer”? A  
reading of the statutes defining “certification of com-  
pliance” indicates clearly that whomever takes respon-  
sibility for the product liability, is the manufacturer --  
that’s most certainly the *effect* of the statute.

1 or had been, subsequent to its certification, been found to be noncompliant with the  
2 Federal Standard, AND that the defendant had “actual knowledge” of either or both of  
3 these necessary conditions.

4 In order to clear up whatever vagueness element as was brought about the  
5 scientier requirement imposed by the *Bianco* court, the 9th Circuit Court of Appeals  
6 (US) wrote in *Easyriders v. Hannigan*:

7 “The helmet law, as interpreted by the California courts . . . requires  
8 specific intent as one of its elements. A motorcyclist who is wearing a  
9 helmet that was certified by the manufacturer at the time of sale must  
10 have actual knowledge of the helmet’s nonconformity to be guilty of  
11 violating the helmet law. Thus, in addition to intending to wear the  
12 helmet in question, the motorcyclist must intend to wear a helmet that  
13 he knows does not comply with the helmet law.(FN) Thus, because a  
14 violation of the helmet law requires specific intent on the part of a  
15 motorcyclist wearing a helmet that was certified at the time of  
16 purchase, the ticketing officer must have probable cause to believe  
17 that the specific intent, caused by the motorcyclist’s actual knowl-  
18 edge of non-conformity, exists.”<sup>5</sup> *Easyriders v. Hannigan*

17 / / /  
18 / / /  
19 / / /  
20 / / /

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22 5 The court went on to point to the fact that citations  
23 issued without the requisite “actual knowledge” ele-  
24 ments, violated the 4th amendment rights of individu-  
25 als similarly situated to the defendant in the instant  
26 case, to wit:

27 “Given CHP’s clear policy of ticketing motor-  
28 cyclists with non-complying helmets based on  
officers’ discretion and without regard to the  
motorcyclists’ knowledge of noncompliance,  
and given the irreparable harm from Fourth  
Amendment violations that cannot be ad-  
equately compensated at law, the second half of

**the district court’s injunction, requiring the  
CHP to have probable cause to believe that the  
motorcyclists wearing helmets that were certi-  
fied at the time of purchase have actual knowl-  
edge of the helmet’s noncompliance with Stan-  
dard 218, was appropriate in this case.”**  
*Easyriders v. Hannigan*

1 **C. The helmet law is unconstitutionally vague.**

2 **1. A Penal Statute That Does Not Give Fair Notice of Prohibited Conduct is**  
3 **Unconstitutionally Vague**

4 The United States Supreme Court has clearly enunciated the constitutional  
5 principle that statutes which do not give fair notice of prohibited conduct are unconsti-  
6 tutionally vague and unenforceable pursuant to substantive due process principles  
7 under the Fourteenth Amendment. In *Grayned v. City of Rockford* 408 U.S. 104, 108  
8 (1971), the Court stated the basic principle of due process:

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

22 The U.S. Supreme Court has taken a strong position in voiding statutes that  
23 are penal in nature<sup>6</sup> involving individuals as defendants. The Court has even gone so  
24 far as to block the enforcement of a statute that required any person convicted of a  
25 felony in California to register with the police if they were going to be present in the  
26 city of Los Angeles. *Lambert v. California* 355 U.S. 225 (1957). The Court struck  
27 down the law because there was no showing of probability that a convicted felon

28 <sup>6</sup> 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.)

1 would acquire actual knowledge of the registration requirement and, therefore, would  
2 not have sufficient notice of the imposed registration duty.<sup>7</sup>

3 The Court has struck down statutes on vagueness grounds in numerous  
4 contexts where men of common intelligence must necessarily guess at the statutes  
5 meaning. Cases illustrative of the Supreme Court’s approach on vagueness issues  
6 include *Connally v. General Const. Co.* 385 U.S. 391 (1926) (wage law struck down  
7 because operative words in the statute had no common meaning that men of ordinary  
8 intelligence could understand); *Papachristou v. City of Jacksonville* 405 U.S. 156  
9 (1971) (vagrancy laws declared void because of lack of notice to potential offender  
10 and discretion afforded police); and *Lanzetta v. New Jersey* 306 U.S. 451 (1939) (in-  
11 validated statute for vagueness relating to uncertainty as to what a gangster is and  
12 what a gang is.)<sup>8</sup>

13 The leading Ninth Circuit case is *Lawson v. Kolender* 658 F.2d 1362 (1981)  
14 affirmed by the U.S. Supreme Court in *Kolender v. Lawson* 461 U.S. 352 (1983).  
15 *Lawson* concerned the validity of a California vagrancy statute. In affirming the Ninth  
16 Circuit, Justice O’Connor made clear the requirements of the void for vagueness  
17 doctrine at 461 U.S. 357:

18  
19 **“As generally stated the void-for-vagueness doctrine requires**  
20 **that a penal statute define the criminal offense with sufficient defi-**  
21 **niteness that ordinary people can understand what conduct is pro-**  
22 **hibited and in a manner that does not encourage arbitrary and**  
23 **discriminatory enforcement.” (cites omitted).**

24  
25 <sup>7</sup> *Lambert* has particular significance to this case in  
26 that the statute ruled unconstitutional in *Lambert* was  
27 definitive in nature. The statute therein described  
28 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.

<sup>8</sup> 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). Be-  
cause the instant case does not involve business regu-  
lation, that line of cases will not be addressed.

1           The Court went on to analyze the California vagrancy statute and determined  
2 it was void for vagueness because the ordinary person could not determine how to  
3 comply and insufficient standards were established for enforcement. There is no  
4 question that a penal statute must give fair notice of prohibited conduct sufficient for  
5 both the individual who must comply and for the police so that enforcement is not  
6 arbitrary. In the instant case, California Vehicle Code (“VC”) §27803 is clearly vague  
7 so as to make it unconstitutional as discussed below.

8           **2. The California Mandatory Helmet Law Does Not Provide Fair notice of Pro-**  
9           **hibited Conduct**

10           VC §27803 is the California statute which makes it mandatory for adult  
11 motorcycle drivers and passengers in California to wear safety helmets or be in viola-  
12 tion of the law. The law, however, does not define what a safety helmet is or how to  
13 select one that complies. In fact, VC §27803 provides no guidance as to how to com-  
14 ply with, or enforce, the law. It is merely the beginning of a complex statutory  
15 scheme, including incorporations by reference, which weaves through a maze of state  
16 statutes, federal statutes and regulations before winding up with an apparent require-  
17 ment that all drivers and passengers of motorcycles shall wear safety helmets that  
18 meet the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 218, if  
19 tested. Even if the consumer could find his or her way to FMVSS 218 that would still  
20 not assist them in determining how to select a helmet to comply with the Helmet Law.  
21 Unfortunately, FMVSS 218 is a technical test specification which gives guidance to  
22 no one, except the manufacturer who must certify that its product is designed to pass  
23 the battery of tests included therein. Nowhere in the law does it describe what a safety  
24 helmet is, what it looks like or what it is made of. The requirements only provide test  
25 specifications. (*Washington v. Maxwell*, 74 WASH.APP. 688, 878 P.2D 1220)

26           The driver or passenger (those affected by VC §27803) of a motorcycle has  
27 no way to test the helmet to see if it will pass FMVSS 218 and has no control over the  
28 helmet design or design certification. Even the manufacturer cannot test a helmet

1 before sale because the test itself destroys the helmet. The manufacturer merely certi-  
2 fies that, if tested, its helmet has been designed in such a manner that it will pass  
3 FMVSS 218 testing. Neither the driver nor the passenger can determine if a particular  
4 helmet will comply with FMVSS No. 218. In spite of the fact that there are no stan-  
5 dards to go by, law enforcement agencies in California have issued tens of thousands  
6 of citations to motorcyclists wearing helmets, alleging that their helmets will, or  
7 would, not pass 218 testing. Over the years since its enactment, the law has been used  
8 to violate the constitutional rights of tens of thousands of motorcycle riders, who were  
9 wearing helmets, because of the vagueness problems.<sup>9</sup>

### 10 **3. The California Statutory Framework Provides No Notice Of How Consumers** 11 **Can Comply With The Mandatory Helmet Law**

#### 12 **a. The Statutory Scheme**

13 At each stage of the statutory scheme it is obvious that the consumer has not  
14 been provided with notice of how to select a helmet to comply with the law. The law  
15 does not merely require the wearing of a helmet but the wearing of a “safety helmet”  
16 that is never defined.

17 §27803(b) does not notify anyone of what a safety helmet is or what safety  
18 helmet is required to be worn.<sup>10</sup> §27803(b) merely refers to §27803(a).

19 It is obvious that §27803(a) does not notify anyone of what a safety helmet  
20 is, or what safety helmet is required to be worn. It does, however, state that the safety  
21 helmet shall meet the *requirements* established pursuant to §27802. Accordingly,  
22 subdivisions (a) and (b) of §27803 make it unlawful to operate a motorcycle without a  
23 safety helmet “meeting requirements established pursuant to Section 27802”. In order  
24 to establish what safety helmet a driver must wear, it is first necessary to determine

25 <sup>9</sup> See *People v. Brown* — (Exhibit A, attached): The  
26 Appellate Department of the Superior Court of  
27 Ventura County held the consumer liable for a  
28 perceived defect in a helmet label, and completely  
ignored the legislative imparitive underpinning CVC  
40610. This was a *terrible* decision – completely  
unsupported by the law.

<sup>10</sup> If a consumer is wearing no helmet at all they are

cited for violating §27803(b). The same section is  
used to cite consumers who are wearing helmets,  
albeit helmets that law enforcement agencies allege  
do not comply with the law. A consumer who is  
wearing a helmet is, therefore, subject to the same  
criminal sanctions as one who is not. The CHP  
alone has issued over 10,000 citations for violation  
of §27803(b), most for “wearing” helmets.

1 what helmet, in fact, meets those requirements. VC §27802 is a seller statute which  
2 establishes standards for helmets offered for sale for use on motorcycles.

3 Section 27802, subdivision (a) contains three sentences. The first sentence  
4 authorizes the department to adopt “reasonable regulations establishing specifications  
5 and standards for safety helmets.” This first sentence, which is merely an enabling  
6 provision, does not appear to be one of the “requirements” referred to in section  
7 27803.<sup>11</sup>

8 The second sentence of the subdivision mandates that the promulgated state  
9 regulations include, at a minimum, “the *requirements* imposed by Federal Motor  
10 Vehicle Safety Standard No. 218 (49 C.F.R. Sec. 571.218).” (*Italics added*) This  
11 sentence, which actually includes the word “requirements” certainly appears to be one  
12 of the “requirements established pursuant to Section 27802” referred to in section  
13 27803, subdivision (a).<sup>12</sup> The Federal Safety Standard referred to is FMVSS 218  
14 (Exhibit “B”). A reading of that standard shows that it is a complex 16 page set of test  
15 specifications used to certify a design.

16 In fact, Section S5 of that standard specifically addresses its *requirements*.  
17 These are apparently “the requirements imposed by Federal Motor Vehicle Safety  
18 Standard No. 218” as stated in the second sentence of §27802. The requirements  
19 section of 218 reads as follows:

20 **“S5. Requirements. Each helmet shall meet the requirements of S5.1,**  
21 **S5.2, and S5.3 when subjected to any conditioning procedure speci-**  
22 **fied in S6.4, and tested in accordance with S7.1, S7.2 and S7.3.”**

---

23  
24 <sup>11</sup> The Department did establish a regulation as follows:

25 “Motorcycle and motorized bicycle safety hel-  
26 mets governed by Vehicle Code Section 27802  
27 *shall meet* Federal Motor Vehicle Safety Stan-  
28 dard No. 218.” (13 California Code of Regu-  
lations Section 982). (*emphasis added*)

There is no notice in this statute as to how to  
find FMVSS 218 and any ordinary consumer cannot

be expected to just know where to find the regula-  
tion.

<sup>12</sup> This is the same requirement established in 13  
CCR §982 pursuant to the first sentence (see foot-  
note 5) which makes it appear more probable that  
this is the requirement meant to be imposed on  
consumers.

1 Just a cursory reading of the requirements makes it clear that these require-  
2 ments would not provide a reasonable opportunity for a person of ordinary intelli-  
3 gence to know what conduct is required or prohibited by FMVSS 218, therefore by  
4 the Helmet Law.<sup>13</sup>

5 There are additional subsections of S5 which, although not specified as  
6 requirements, designate criteria that each helmet shall comply in the following areas:

7 **S5.4 - Configuration;**

8 **S5.5 - Projection;**

9 **S5.6 - Labeling; and**

10 **S5.7 - Helmet positioning index.<sup>14</sup>**

11 It is not clear if these are requirements to be imposed on consumers, even  
12 though not designated as such.

13 The third sentence of section 27802, subdivision (a), imposes a requirement  
14 that every helmet “sold or offered for sale . . . be conspicuously labeled” by the manu-  
15 facturer, which label shall “constitute the manufacturer’s certification that the helmet  
16 conforms” to federal safety standards. This sentence requiring conspicuous labeling  
17 could also be read as one of the “requirements established pursuant to Section 27802”  
18 referred to in section 27803.

19 Thus, read together, sections 27803 and 27802 (aside from the *Buhl* deci-  
20 sion) could reasonably be construed to require that motorcyclists wear a helmet that is  
21 (1) properly fabricated, i.e., meets the requirements of the federal safety standards, or  
22 is (2) properly labeled at the time of sale, i.e., bears the manufacturer’s certification  
23 that it meets federal safety standards (whether or not the certification is correct), or is  
24 (3) both properly fabricated and properly labeled at the time of sale, in California.

25 <sup>13</sup> As an example, S5.1 impact attenuation establishes  
26 the following requirements:

- 27 (a) Peak acceleration shall not exceed 400g;  
28 (b) Acceleration in excess of 200g shall not exceed  
a cumulative duration of 2.0 milliseconds; and  
(c) Acceleration of 150g shall not exceed a cumu-  
lative duration of 4.0 milliseconds.

<sup>14</sup> S5.4 requires configuration standards when refer-  
enced to the mid-sagittal and basic planes. S5.7 re-  
quires the establishment of a helmet positioning index  
which is to be furnished immediately to any person  
who requests it.

1 **b. The Statutory Scheme Does Not Give Notice of How to Comply**

2 Nowhere in the statutory scheme are we told what a safety helmet is, just  
3 what is supposed to happen in the event the helmet is tested. The statutory scheme  
4 provides no definitive answers, but raises many significant questions.<sup>15</sup>

5 What *is* clear is that there is no way for a person of ordinary intelligence to  
6 determine what the requirements are just by reading the applicable statutes and regula-  
7 tions. Further, although plaintiffs strenuously argue that consumers should not be  
8 required to research and interpret case law to determine what conduct is required to  
9 avoid criminal liability, even a reading of the case law would not help clarify the  
10 situation.

- 
- 11 <sup>15</sup> (a) ...with regard to a consumer’s responsibility for  
12 wearing a helmet that is properly fabricated?:  
13 i. Is the consumer required to search, find and interpret the  
14 California Regulations, i.e., 13 CCR §982?;  
15 ii. Is the consumer required to search, find and interpret  
16 FMVSS 218?;  
17 iii. How does the consumer learn of the fabrication require-  
18 ments?;  
19 iv. Is the consumer responsible for helmet testing?;  
20 v. If so, how does the consumer test the helmets?;  
21 vi. Does the consumer have responsibilities relating to  
22 helmet design?;  
23 vii. Is the consumer responsible for design certification?;  
24 viii. Which FMVSS is the standard? ( FMVSS 218 has been  
25 amended more than 3 times. Some of them very signifi-  
26 cant such as the 1981 amendment. In fact, NHTSA has  
27 said in correspondence that helmets produced prior to  
28 1981 should be discarded and new ones bought (Ex.  
“24”). Are the pre-1981 helmets illegal for use?);  
ix. How many helmets of a similar design must fail 218  
testing before a helmet is illegal?;  
x. The 1990 Hurt Report (Exhibit “27”) found that over  
30% of the Snell certified helmets failed 218 dwell time  
tests - are these designs illegal?;  
xi. Does a helmet have to pass all 218 requirements to be  
legal?;  
xii. If one helmet fails one test is the entire design illegal?;  
(i.e. if one helmet fails one test are all other helmets of the  
same design illegal?);  
xiii. Who determines if a helmet design meets 218 require-  
ments?;  
xiv. How is that determination made?;  
xv. Is the consumer responsible for the adhesive selection  
for the labeling to keep it “permanent”?;  
xvi. Is the consumer responsible for the helmet positioning  
index?;  
xvii. If the helmet positioning index is not provided imme-  
diately upon request of the manufacturer, is the helmet  
design illegal?  
(b) ...with regard to a consumer’s responsibility for a  
helmet that has proper labeling at the time it is sold  
or offered for sale:  
i. How does the consumer learn of the labeling require-  
ments?;  
ii. What does proper labeling mean?;  
iii. Is labeling required to be permanent?;  
iv. What does permanent mean?;  
v. What adhesives are necessary?;  
vi. If a helmet of a similar design fails 218 testing and the  
consumer’s helmet has not been tested and is properly  
labeled is it illegal to wear?;  
vii. What labeling requirements apply to the legality test -  
only the external manufacturer certification or the inter-  
nal labeling as well?;  
viii. If a label comes off but the helmet still passes the test  
requirements for safety is it illegal for use in California?;  
ix. Which FMVSS 218 is the standard - only the current  
version or the previous versions also?;  
x. Are helmets labeled under the prior versions illegal?;  
xi. Are all of the helmets that have failed FMVSS 218  
criteria illegal? (Attached as Exhibit “31” is a list of  
helmets that NHTSA represents have failed FMVSS  
218.)  
(c) ...with regard to consumer responsibility for using equip-  
ment that meets the requirements of a FMVSS:  
i. Does that apply to all other FMVSS equipment or just  
motorcycle helmets?;  
ii. How does the consumer get actual knowledge of these  
new crimes?  
iii. Where are all the citations to individuals for wearing  
seatbelts, or using child seats, that had failed FMVSS 218  
testing or otherwise have been recalled?

1 **4. California Case Law Has Made the Consumer Requirements Incomprehen-**  
2 **sible**

3 **a. *Buhl v. Hannigan* (16 CA 4th at p. 1622)**

4 Because of the impossible nature of trying to determine what helmets com-  
5 ply with the Helmet Law by reading the statutes and regulations a constitutional attack  
6 was brought in state court in *Buhl v. Hannigan* (1993) 16 CA 4th 1612. *Buhl* involves  
7 numerous constitutional challenges to the Helmet Law. One aspect of the attack was  
8 that the laws were void for vagueness because they prescribed a standard which could  
9 not be understood by persons of ordinary intelligence.

10 Significantly, the Court of Appeal rejected that argument by reasoning that it  
11 was based on the false premise that sections 27802 and 27803 require motorcyclists to  
12 wear a properly fabricated helmet. It characterized such a reading of the statutes as  
13 “absurd”, and it held that the statutes require only that motorcyclists wear a properly  
14 *certified* helmet. The court opined as follows:

15 “...underlying [the appellants’ vagueness] argument is the proposi-  
16 tion that the statute requires the consumer or enforcement officer to  
17 decide if the helmet is properly fabricated, and such a reading of  
18 section 27803 is absurd. When sections 27802 and 27803 are harmo-  
19 nized, as they must be [citation], it is clear the law requires only that  
20 the consumer wear a helmet bearing a certification of compliance.”  
(*Ibid.*)

21 In holding that the Helmet Law was constitutional, the *Buhl* court indicated  
22 that certification of compliance was the *only* consumer requirement.

23 **b. *Bianco v. California Highway Patrol* ( 24 Cal.App.4th 1113, 29 Cal.Rptr.2d 711)**

24 What appeared to be a clear mandate from the *Buhl* court, that the consumer  
25 was only required to wear a helmet with a manufacturer’s certification at the time of  
26 sale, was quickly erased in *Bianco v. California Highway Patrol* (1994) 24 CA 4th  
27 1113. *Bianco* is the only California Appellate Court decision applying *Buhl* to a con-  
28 sumer actually cited for wearing a helmet bearing a manufacturer’s certification.

1 In *Bianco*, the appellant was challenging a California Highway Patrol  
2 (“CHP”) information bulletin (Bulletin No. 34) issued on June 1, 1992, 13 months  
3 before the Court of Appeal filed its decision in *Buhl*. The appellant, appearing in  
4 propria persona, was contending that the CHP bulletin was against the law – insofar as  
5 it called for the citation of riders wearing a particular motorcycle helmet which had  
6 been improperly fabricated and did not meet federal safety standards – on the ground  
7 that *Buhl* had interpreted California law to require only that motorcyclists wear hel-  
8 mets certified by the manufacturer whether or not the helmet would pass the technical  
9 requirements.

10 In rejecting that challenge, the *Bianco* court definitively stated:

11 **“Section 27803 makes it illegal to drive or ride on a motorcycle**  
12 **without a helmet that meets the federal standards.” (Ibid) (24 CA 4th**  
13 **1122).**

14 The *Bianco* court made it clear that under the Helmet Law the consumer is  
15 responsible for wearing a helmet that meets FMVSS 218. *Bianco* held that the “certi-  
16 fication of compliance” represents merely a “rebuttable presumption” that the con-  
17 sumer is in compliance with the Helmet Law, and that the consumer is still responsible  
18 for whether or not their helmet “meets the Federal Standard”.<sup>16</sup>

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20 / / /

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22  
23 <sup>16</sup> The *Bianco* court distinguished its interpretation of  
24 the Helmet Law from *Buhl* because *Buhl* was refuting  
25 a constitutional attack and *Bianco* involved an actual  
26 situation involving a consumer who was cited with a  
27 specific helmet:

28 **“This statement in *Buhl* (that only a certi-  
fication of compliance was required) was made  
in the context of refuting a constitutional  
attack on the helmet law as being too techni-  
cal in prescribing a standard that cannot be  
understood by persons of ordinary intelli-  
gence.**

**“. . . No specific helmet was at issue in *Buhl*,  
whereas this case specifically deals with the  
'beanie' helmet manufactured by E & R Fi-  
berglass - a helmet that has been found not to  
meet the federal standards. . .” (Ibid.) (24 CA  
4th 1123).**

*Bianco* did not go past dealing with Mr. Bianco and  
his E&R "beanie" helmet, except to say that specifif  
intent was part of the statute -- discussed later in this  
brief.

1 Accordingly, the *Bianco* court affirmed the following findings<sup>17</sup> of the trial  
2 court:

3 **“3. In accordance with the terms of the Act, although in the first**  
4 **instance manufacturers are authorized, indeed required before sale,**  
5 **to self-certify that their helmets meet the standard of FMVSS 218,**  
6 **that self-certification creates only a rebuttable presumption that**  
7 **such helmets meet FMVSS 218.<sup>18</sup>**

8 **“4. In accordance with provisions of the Act, that presumption may**  
9 **be rebutted by a determination of non-compliance issued by the**  
10 **National Highway Transportation Safety Administration (hereinaf-**  
11 **ter “NHTSA”) of the Department of Transportation, by a manufac-**  
12 **turer recall of its product, or by any other competent objective**  
13 **evidence which establishes that in fact a given manufacturer’s helmet**  
14 **does not meet the safety standards of FMVSS 218.” (Ibid.) (24 CA 4th**  
15 **1123).**

16 In addressing appellant’s argument relating to the third finding, that *Buhl*  
17 only required of the consumer the certification of compliance the court stated:

18 **“We conclude the statement in *Buhl* that consumer compliance with**  
19 **the state law only requires the consumer to wear a helmet bearing the**  
20 **DOT self-certification sticker does not apply when a helmet has been**  
21 **shown not to conform with federal standards and the consumer has**  
22 **actual knowledge of this fact. (Ibid.) (24 CA 4th 1123).” (emphasis**  
23 **added)**

24 / / /

25 / / /

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26 <sup>17</sup> In fact, the Court affirmed all the findings of the trial  
27 court.

28 <sup>18</sup> The court also discussed the Federal honor system  
and the rebuttable presumption as follows:

“The Federal statutory scheme contemplates  
an honor system in which manufacturers comply  
with detailed federal performance standards for  
motor vehicle equipment through self-certifica-  
tion. If a manufacturer determines that its hel-  
met conforms to the federal standards and certi-

fies that conformity by labeling the helmet with a  
DOT self-certification sticker, it is legal to sell  
that helmet under the federal law and it is legal  
under California law to drive a motorcycle while  
wearing that helmet until such time as that helmet  
has been shown not to conform to the federal  
standards. Once a helmet is shown not to conform  
to the Federal Standards . . . The presumption of  
compliance created by the self-certification label  
is rebutted.” (emphasis added) (24 CA 4th 1123).

1 In addressing appellant’s same argument relating to the fourth finding the  
2 court stated:

3 “As we have previously pointed out, the statement in *Buhl* does not  
4 apply to situations in which there has been a determination of  
5 noncompliance with the federal standards and the consumer has  
6 actual knowledge of such determination.” (*Ibid.*) (24 CA 4th 1125).

7 The *Bianco* court, therefore, held there are three events that rebut the certifi-  
8 cation of compliance enunciated in *Buhl*.

- 9 (1) A determination of noncompliance issued by NHTSA;<sup>19</sup>  
10 (2) A manufacturer’s recall of its product; or  
11 (3) Any other competent objective evidence which establishes that in fact a  
12 given manufacturer’s helmet does not meet the safety standards of  
13 FMVSS 218.

14 The wearing of a “safety helmet”, after actual knowledge by the consumer of  
15 any of these three events, is prohibited conduct that creates criminal liability for an act  
16 that was previously innocent.

17 An objective analysis of the law as interpreted by the California courts  
18 makes it clear that the Helmet Law imposes criminal liability on a consumer if there is  
19 “any competent evidence” that “a given manufacturer’s helmet does not meet the  
20 safety standards of FMVSS 218”. This standard is so vague that no person of ordinary  
21 intelligence can determine what conduct is prohibited.

22 The disparities between the *Buhl* and *Bianco* decisions cannot be reconciled  
23 — the dispute between the “only” requirement cited by *Buhl* (that a helmet bear a  
24 certification of compliance), and the exception in *Bianco* (the “only” doesn’t count  
25 when a rider has “actual knowledge of a determination of noncompliance”) only  
26 serves to emphasize the vagueness of the statutes, as was soon revealed in and by the  
27 Federal Courts in *Easyriders v. Hannigan*.

28 <sup>19</sup> NHTSA refers to the National Highway Traffic Safety Administration of the U.S. Department of Transportation.

1 **c. Decisions from the Federal Courts have only added to the confusion:**

2 In *Easyriders v. Hannigan*, case #95-55946-7, decided August 1996, 9th  
3 Circuit Court of Appeals, the plaintiffs were seeking relief from the unconstitutional  
4 enforcement of the helmet law against their clients, who, like the defendant here, were  
5 all wearing helmets at the time they were stopped and cited.

6 The Federal District Court in San Diego, although it (on a mistake of fact)  
7 upheld the constitutionality of the helmet law, otherwise agreed with the plaintiff's  
8 complaint that the officers lacked the requisite reasonable suspicion to believe a crime  
9 had been committed, and issued an injunction prohibiting the California Highway  
10 Patrol, and those guided by their instructions and policies, from stopping and citing  
11 motorcyclists who were wearing helmets.

12 On appeal, the 9th Circuit Court of Appeals overruled the opinion of the  
13 District Court in part (also on the basis of a mistake of fact), and upheld in part. In  
14 sum, the court found that the visual appearance of a helmet provided adequate grounds  
15 to stop a motorcyclist and conduct an investigation as to whether or not their helmet  
16 was in compliance with the statutes.<sup>20</sup> However, the court also ruled, relative to issu-  
17 ance of a citation, that "because a violation of the helmet law requires specific intent  
18 on the part of a motorcyclist wearing a helmet that was certified at the time of pur-  
19 chase, the ticketing officer must have probable cause to believe that the specific intent,  
20 caused by the motorcyclist's actual knowledge of non-conformity, exists."(*Easyriders*)

21  
22  
23 <sup>20</sup> "...an officer would usually have at least "reason-  
24 able suspicion," based on reasonable inferences drawn  
25 from the helmet's appearance and publicity regarding  
26 noncomplying helmets, that the motorcyclist was vio-  
27 lating the helmet law." *Easyriders v. Hannigan*  
28 This ruling reflects more about the failure of plaintiff's  
counsel than about whether the law is vague. Properly  
presented, the court could never have reached this  
conclusion, nor the comments that followed:

**"...there are some helmets that are DOT  
approved that are similar in appearance to  
non-complying helmets . . . Thus, an officer**

**may stop a motorcyclist for investigatory  
purposes based on the appearance of the  
helmet, even if in many cases the motorcy-  
clist will not have the requisite knowledge  
of non-compliance and thus will be inno-  
cent of wrongdoing." (*Id.*)**

With due respect for the 9th, "...such a reading  
of 27803 is absurd." (*Buhl*) **THERE IS NO SUCH  
THING AS A "DOT APPROVED" HELMET!!!**  
Nor is there any other objective standard for helmet  
appearance in any of the governing statutes or stan-  
dards.

1 In a separate, recent, unrelated opinion, *USA v. Soto* (Case #9950201 — 9th  
2 Circuit, March 8, 2000), the same court wrote:

3 **“Reasonable suspicion is formed by specific, articulable facts which,  
4 together with objective and reasonable inferences, form the basis for  
5 suspecting that the person detained is engaged in criminal activity.  
6 An officer is entitled to rely on his training and experience in drawing  
7 inferences from the facts he observes, but those inferences must be  
8 grounded in objective facts and be capable of rational explanation.”  
9 USA v Soto 9950201**

10 In that the defendant has no “actual knowledge of nonconformity” on his  
11 helmet, as required in *Easyriders*; how are any of the citing officers going to articulate  
12 facts sufficient to prove that he does, as required in *Soto*?<sup>21</sup> How can the officers  
13 testify as to what the defendant does or does not know about the conformity of his  
14 helmet; about the results of tests that have never been conducted?

15 At the hearing, the defendant will prove that the citing officers did not have  
16 the requisite knowledge to issue the citation AND that, in spite of the rulings of the  
17 various courts, they didn’t even have the requisite knowledge to justify making the  
18 traffic stop.

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19 <sup>21</sup> In *Easyriders*, the 9th Circuit attempted to aid the  
20 CHP in establishing methods for citing motorcyclists  
21 that did not violate their rights; however they did so in  
22 an apparent vacuum:

23 **“If the officer discovers that a helmet has  
24 been determined not to comply with DOT  
25 standards but does not have probable cause  
26 to believe that the motorcyclist knows of the  
27 non-compliance, he could give a written  
28 warning to the motorcyclist that the helmet  
does not comply, and CHP could keep a  
record of such warnings. If the motorcyclist  
is stopped again, by the same or a different  
officer, this notice, or other information  
indicating that the individual motorcyclist  
knew about the helmet’s noncompliance,  
could satisfy the probable cause of actual  
knowledge requirement.”**

Apparently the court was guided by their earlier  
noted misconception that somewhere, some sort of  
LIST exists which would provide both police officers  
and consumers with accurate, objective, information  
that could be imparted by either in any given circum-  
stance -- this conclusion is unfounded.

Although the defendant has heard that at one point,  
NHTSA had a list of SOME helmets that had failed  
testing, ALL helmets are not tested, and thus only those  
whose helmets had been tested, and failed, would ever  
have any notice regarding their helmet compliance/  
noncompliance.

At best, this system would require the consumer to  
be responsible for whether or not the manufacturer  
properly certified their helmet, and at worst is a shoddy,  
unprecedented way for imparting notice regarding the  
requirements of a penal statute.

1 **5. The statute is unconstitutional as applied:**

2 The Court has struck down statutes on vagueness grounds in numerous  
3 contexts where men of common intelligence must necessarily guess at the statutes  
4 meaning. Cases illustrative of the Supreme Court’s approach on vagueness issues  
5 include *Connally v. General Const. Co.* 385 U.S. 391 (1926) (wage law struck down  
6 because operative words in the statute had no common meaning that men of ordinary  
7 intelligence could understand); *Papachristou v. City of Jacksonville* 405 U.S. 156  
8 (1971) (vagrancy laws declared void because of lack of notice to potential offender  
9 and discretion afforded police); and *Lanzetta v. New Jersey* 306 U.S. 451 (1939) (in-  
10 validated statute for vagueness relating to uncertainty as to what a gangster is and  
11 what a gang is.)

12 The leading Ninth Circuit case is *Lawson v. Kolender* 658 F.2d 1362 (1981)  
13 affirmed by the U.S. Supreme Court in *Kolender v. Lawson* 461 U.S. 352 (1983).  
14 Lawson concerned the validity of a California vagrancy statute. In affirming the  
15 Ninth Circuit, Justice O’Connor made clear the requirements of the void for vague-  
16 ness doctrine at 461 U.S. 357:

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

22 The Court went on to analyze the California vagrancy statute and determined  
23 it was void for vagueness because the ordinary person could not determine how to  
24 comply and insufficient standards were established for enforcement. There is no  
25 question that a penal statute must give fair notice of prohibited conduct sufficient for  
26 both the individual who must comply and for the police so that enforcement is not  
27 arbitrary.

28 / / /

1 In the instant case, California Vehicle Code (“VC”) §27803 is also clearly  
2 vague so as to make it unconstitutional. Each court has had to include a mistake of  
3 facts to support their respective decisions upholding the constitutionality, starting with  
4 Buhl:

5 **“Appellants contend the helmet law is void for vagueness under the**  
6 **federal and state constitutions in that it ‘prescribes a standard which**  
7 **cannot be understood by persons of ordinary intelligence.’ They**  
8 **assert neither motorcyclists nor police officers can tell whether a**  
9 **particular helmet complies.**

10 **“Their first claim in this respect is the law is too specific: The**  
11 **incorporated federal safety standards are so technical one must be a**  
12 **physicist or an engineer testing the product in a laboratory to**  
13 **ascertain whether a particular helmet complies. But underlying this**  
14 **argument is the proposition that the statute requires the consumer or**  
15 **enforcement officer to decide if the helmet is properly fabricated, and**  
16 **such a reading of section 27803 is absurd. When sections 27802 and**  
17 **27803 are harmonized, as they must be (*Bowland v. Municipal Court***  
18 **(1976) 18 Cal.3d 479, 489, 134 Cal.Rptr. 630, 556 P.2d 1081), it is clear**  
19 **the law requires only that the consumer wear a helmet bearing a**  
20 **certification of compliance.”**

21 *Buhl’s* mistake of fact would be funny, were it not for the fact that it side-  
22 stepped the reality of the vagueness issue. The fact is that on the day the court made  
23 their decision, it is estimated that at least 100 motorcyclists were cited for wearing  
24 helmets bearing a certification of compliance (based on figures obtained in deposition  
25 in the *Easyriders* case — offer to prove.) In any case, their “only” was soon to be set  
26 aside by another mistake of fact by the *Bianco* court:

27 **“We conclude the statement in Buhl that consumer compliance with**  
28 **the state law only requires the consumer to wear a helmet bearing the**  
DOT self-certification sticker does not apply when a helmet has been  
shown not to conform with federal standards and the consumer has  
actual knowledge of this fact. That the E & R Fiberglass ‘beanie’  
helmet does not comply with the federal standards is supported by the

1 tests performed at the request of NHTSA by two independent testing  
2 facilities as well as by E & R Fiberglass's agreement to recall the  
3 helmet. Also borne out by the record on appeal here is the fact that at  
4 least since his citations, Bianco has had actual knowledge of the  
5 determination that the 'beanie' helmet did not conform to the federal  
6 standards. Exhibit D to Bianco's original petition for writ of manda-  
7 mus is a September 25, 1992, letter to Bianco from the NHTSA  
8 stating, among other things, that the 'beanie' helmet had been tested  
9 and shown not to comply with the federal standard."

10 The assumption of the *Bianco* court, in setting aside the ruling of the *Buhl*  
11 court relative to the requirements of the statute, was that Bianco's helmet had been  
12 determined not to comply with FMVSS 218 — the evidence being a convenient read-  
13 ing of the referenced September 25th letter to Bianco where they ignored the state-  
14 ment by NHTSA (the regulating body) that NHTSA had not made a formal determina-  
15 tion of noncompliance. However, that's not the worst failure of the ruling. The worst  
16 failure was the introduction of a new phrase — the "only" in *Buhl* does not apply  
17 when "a helmet has been shown not to conform with federal standards and the con-  
18 sumer has actual knowledge of this fact."

19 The *Bianco* court did not say what constituted evidence that a helmet is  
20 shown not to conform, nor did they indicate in what form "actual knowledge" was to  
21 be imparted — a message soon made clear when the *Easyriders* court, by way of  
22 assisting law enforcement in dealing with this (vagueness) problem, drawing on the  
23 false assumption made elsewhere that a given helmet (any helmet) could be "DOT  
24 approved" (see footnote #20), wrote:

25 "If the officer discovers that a helmet has been determined not to  
26 comply with DOT standards but does not have probable cause to  
27 believe that the motorcyclist knows of the non-compliance, he could  
28 give a written warning to the motorcyclist that the helmet does not  
comply, and CHP could keep a record of such warnings. If the  
motorcyclist is stopped again, by the same or a different officer, this  
notice, or other information indicating that the individual motorcy-  
clist knew about the helmet's noncompliance, could satisfy the prob-  
able cause of actual knowledge requirement."

1 The whole question about *HOW* an officer “discovers that a helmet has been  
2 determined not to comply with DOT standards” is one that has not been answered, nor  
3 likely to be.

4 The simple fact is that without a *list* of specific helmets that comply with  
5 whatever standards have been or eventually are adopted — a list which serves to  
6 inform both consumer and enforcement officers of which helmets do and do not com-  
7 ply with the requirements to wear a “safety helmet” with sufficient clarity to avoid  
8 being void for vagueness — there is no objective standard to serve as the basis for  
9 issuing a citation to anyone who is wearing virtually anything<sup>22</sup> on their head while  
10 riding a motorcycle . . . the respective decisions (neurotic snits) of the *Buhl*, *Bianco*  
11 and *Easyriders* courts notwithstanding.

12 **6. A violation of CVC §27803 is a correctable equipment violation which cannot**  
13 **operate as the legislature intended:**

14 CVC §27803 is located in Division 12 of the Vehicle Code, and is therefore  
15 designated as “equipment” – equipment violations are “correctable” upon proof of  
16 correction. Here again, the absence of a *list* of compliant helmets becomes a problem.  
17 In order for an officer to sign off a citation pursuant to the provisions of CVC §40303.5,  
18 he would have to make a determination of compliance on a helmet, based on his own  
19 experience, or on his hunch, or on some other subjective evidence of compliance.

20 The issue of liability rears its ugly head about the time some officer decides  
21 that a given helmet complies based on these elusive standards. “He who certifies,  
22 indemnifies” – which means that, by his signature on signing off the corrected offense,  
23 the officer would assume the product liability on the helmet the he “approved.”

24 Surely the California Legislature did not think this through before enacting  
25 the statute. Surely no officer could sign off a citation if it would impose liability on  
26 him or his agency, as would be the case.

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27 <sup>22</sup> It is the contention of the Defendant that a helmet  
28 constructed of a Dixie-cup and a shoe-string, certified  
as being in compliance with Federal Standards, by the  
manufacturer (the person taking responsibility for prod-

uct liability), would constitute a “safety helmet” as  
provided by the statutes. This absurd condition cannot  
be held against the defendant.

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**II. CONCLUSION**

THEREFORE, for the reasons cited above, it is clear that the “seizure,” which the complaints (citations) underpinning this action constitute, were issued without the requisite evidence that a violation of CVC 27803 had been committed by the defendant; that such “seizure” constitutes (at the very least) a violation of the 4th Amendment protections against unreasonable searches and seizures, and is therefore “unreasonable”; and that in light of these facts, the defendant has a reasonable expectation that all the charges brought against him, in that they constitute a violation of his 4th Amendment protections of the constitution, are therefore unreasonable; that all evidence in support of such unreasonable seizure(s) (the testimony of the complaining/citing officers) must be suppressed, and the case(s) against the defendant discharged, with prejudice, for lack of evidence, as a matter of law — the higher courts being united in their contention that even the proposition that the statutes would require any other outcome would be nothing short of “absurd.”

Date: March 21, 2000

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Richard J. Quigley, Defendant, pro se

**VERIFICATION**

I, Richard Quigley, wrote and have read the foregoing and swear under penalty of perjury that all things represented as fact as true; except as to those things stated on information and belief, and as to things I believe them to be true.

Date: March 21, 2000

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Richard J. Quigley, Defendant, pro se