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PATRICK HOLMES, STEVE BIANCO,  
DON BLANSCET, STEVE BARRON  
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**FILED**

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ALEX GALVA, CLERK  
BY   
DEPUTY, SANTA CRUZ COUNTY

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF SANTA CRUZ  
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13 RICHARD QUIGLEY, STEVE BIANCO,  
DON BLANSCET, STEVE BARRON  
14 PATRICK HOLMES,

15 Plaintiffs,

16 v.

17 CALIFORNIA HIGHWAY PATROL; MIKE  
BROWN, Commissioner; CHRISTINA  
18 MANRIQUEZ, Commander; DOES 1 through  
19 10,

20 Defendants.]

Case no. **CV 155682**

**COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF**

21 **Allegations about Parties and Venue**

22 1. Plaintiff Richard QUIGLEY is a resident of Santa Cruz County. Plaintiffs Steve  
23 BIANCO and Steve BARRON are residents of San Diego County. Plaintiff Don BLANSCET is  
24 a resident of Nevada County. Plaintiff Patrick HOLMES is a resident of Fresno County.

25 2. Defendant California Highway Patrol (CHP) is a department of the Business,  
26 Transportation & Housing Agency of the State of California.

27 3. Defendant Mike BROWN is the Commissioner of the CHP, and the person  
28 charged with the responsibility of enforcing Vehicle Code sections 27802 and 27803.

**COMPLAINT FOR INJUNCTION AND DECLARATORY RELIEF**

1 4. Defendant Christina MANRIQUEZ is a resident of Santa Cruz County who is  
2 commander of the Highway Patrol office for the Santa Cruz area.

3 5. Plaintiffs do not know the true names or capacities of defendants DOE 1 through  
4 DOE 10. When plaintiffs learn these defendants' true names and capacities, they will amend the  
5 complaint to further identify these defendants. Plaintiffs are informed and believe, and on that  
6 basis allege, that all the DOE defendants were at all times material to this complaint acting as  
7 agents of defendant BROWN and/or defendant MANRIQUEZ, within the course and scope of  
8 their employment.

9 6. Venue for this action properly lies in Santa Cruz County because that is the  
10 County where defendant MANRIQUEZ resides, and because Santa Cruz County is one of the  
11 places where plaintiffs will suffer injury if defendants are not enjoined from acting.

12 **Allegations about the Motorcycle Helmet Law**

13 7. Vehicle Code section 27803 ("the Motorcycle Helmet Law") requires motorcycle  
14 drivers and passengers to wear safety helmets meeting requirements established by the CHP  
15 pursuant to Vehicle Code section 27802.

16 8. Vehicle Code section 27802 states the requirements imposed on persons who sell  
17 or offer to sell motorcycle helmets. It provides:

18 (a) The department may adopt reasonable regulations establishing specifications  
19 and standards for safety helmets offered for sale, or sold, for use by drivers and  
20 passengers of motorcycles and motorized bicycles as it determines are necessary  
21 for the safety of those drivers and passengers. The regulations shall include, but  
22 are not limited to, the requirements imposed by Federal Motor Vehicle Safety  
23 Standard No. 218 (49 C.F.R. Sec. 571.218) and may include compliance with that  
24 federal standard by incorporation of its requirements by reference. Each helmet  
25 sold or offered for sale for use by drivers and passengers of motorcycles and  
26 motorized bicycles shall be conspicuously labeled in accordance with the federal  
27 standard which shall constitute the manufacturer's certification that the helmet  
28 conforms to the applicable federal motor vehicle safety standards.

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

9. The only regulation adopted by the CHP pursuant to Vehicle Code section 27802  
is 13 California Code of Regulations section 982, which provides: "Motorcycle and motorized

1 bicycle safety helmets governed by Vehicle Code Section 27802 shall meet Federal Motor  
2 Vehicle Safety Standard No. 218.” Federal Motor Vehicle Safety Standard No. 218 (FMVSS  
3 218, found at 49 C.F.R. §571.218). A true copy of FMVSS 218 is attached to this complaint as  
4 Exhibit 1 and incorporated by this reference.

5 10. FMVSS 218 requires that “[e]ach helmet shall meet the requirements of S5.1,  
6 S5.2, and S5.3 when subjected to any conditioning procedure specified in S6.4, and tested in  
7 accordance with S7.1, S7.2, and S7.3.” In other words, FMVSS 218 is a test protocol that  
8 establishes minimum performance standards for motorcycle safety helmet manufacturers.  
9 Assuring a helmet’s actual compliance with FMVSS 218 requires several destructive impact and  
10 penetration tests in a laboratory setting. It is not possible to determine by visual inspection  
11 whether a given helmet would have passed such tests. Therefore, to require “the *consumer or*  
12 *enforcement officer* to decide if the helmet is properly fabricated is absurd” (*Buhl v. Hannigan*  
13 (1993)16 Cal.App.4th 1612, 1622, emphasis in original).

14 11. Vehicle Code section 27802 requires manufacturers to certify compliance with the  
15 218 standard by placing a symbol with the letters “DOT” on the outside of any helmet sold or  
16 offered for sale in California. Section 27802 does not impose any requirements directly on  
17 consumers, nor does it require that the symbol remain on the helmet after it is sold. When a  
18 given helmet was certified at the time of sale as complying with FMVSS 218, the only way for a  
19 consumer or law enforcement officer to determine that the helmet does not comply with section  
20 27803 is to receive actual notice of a subsequent determination of noncompliance with FMVSS  
21 218 by the manufacturer, the National Highway Traffic Safety Administration, or other  
22 competent, objective evidence from an independent testing facility.

23 **Allegations about the CHP’s Enforcement of the Helmet Law**

24 12. The CHP is the only state agency authorized by law to adopt reasonable  
25 regulations establishing specifications and standards for motorcycle safety helmets.

26 13. The CHP’s training materials, and the training the CHP provides to allied police  
27 agencies, state that in order to comply with the helmet law, motorcyclists must wear an  
28

1 “approved” helmet. The federal government is not authorized under FMVSS 218 to certify or  
2 approve helmets, and it does not do so. The CHP likewise does not certify or approve helmets  
3 for compliance with FMVSS 218. The CHP does not maintain, and there does not exist, any list  
4 of helmets that comply with FMVSS 218. There is no other provision that empowers any other  
5 government entity to approve helmets. Relative to California’s Motorcycle Helmet Law, the  
6 phrase “approved helmet” has no meaning.

7 14. The CHP has provided no objective criteria that would give a person of ordinary  
8 intelligence any reasonable way to know what is required of that person under Vehicle Code  
9 section 27803.

10 15. The CHP takes the position, and trains its officers and officers in allied police  
11 agencies to believe, that they can tell by looking at a given helmet whether it is approved for use  
12 in California, although the only standard California has adopted is one under which an officer  
13 cannot make such a determination without laboratory testing.

14 16. Because neither the CHP nor the National Highway Traffic Safety Administration  
15 approves motorcycle safety helmets, and there is no way to tell by appearance whether a given  
16 helmet complies with Vehicle Code section 27803, there is no basis for a law enforcement officer  
17 to stop a motorcyclist on the basis of the appearance of that person’s helmet.

18 17. To arrest a person for violating Vehicle Code section 27803, a law enforcement  
19 officer must have specific, articulable, objective facts that show: (1) that a specific helmet was  
20 not certified at the time of sale as complying, or was subsequently found not to be in compliance,  
21 with FMVSS 218; and (2) that the motorcycle driver or passenger wearing such helmet has actual  
22 knowledge of such initial or subsequent nonconformity.

23 18. Despite the lack of any objective standard, the CHP continues to stop motorcycle  
24 riders for alleged violations of Vehicle Code section 27803 without any basis for determining if  
25 their helmets comply with section 27802. Further, the CHP continues to arrest motorcycle riders  
26 for such alleged violations without regard to the motorcyclists’ actual knowledge of  
27 noncompliance with the statute.

1 **Allegations about Declaratory Relief**

2 19. The allegations of Paragraphs 1-18 above give rise to a genuine, present  
3 controversy between plaintiffs and the CHP concerning the constitutionality of the Motorcycle  
4 Helmet Law as applied by the CHP. Specifically, the CHP trains law enforcement officers to  
5 believe that they can determine by looking at a particular motorcycle helmet that the helmet does  
6 or does not comply with Vehicle Code section 27802. Conversely, plaintiffs believe that the  
7 Motorcycle Helmet Law is void for vagueness as applied, under the Fourteenth Amendment to  
8 the United States Constitution and under article 1, section 15 of the California Constitution,  
9 because there are no objective criteria by which either law enforcement officers, motorcycle  
10 drivers, or motorcycle passengers can tell that a helmet does not comply with the law.

11 20. Plaintiffs are entitled to a declaration that Vehicle Code sections 27802 and  
12 27803, and the regulations the CHP has adopted in purported furtherance of those statutes, are  
13 void for vagueness, as they do not provide a reasonable person an objective means of knowing  
14 whether a given motorcycle helmet does or does not comply with the law.

15 **Allegations about Injunctive Relief**

16 21. Plaintiffs incorporate the allegations of Paragraphs 1-19, above.

17 22. Plaintiff QUIGLEY has been arrested and cited nine times for violation of Vehicle  
18 Code section 27803 despite wearing a helmet which the manufacturer had certified as complying  
19 with FMVSS 218. These arrests violated plaintiff QUIGLEY's right to protection against  
20 unlawful seizures under the Fourth Amendment to the United States Constitution and under  
21 article 1, section 13 of the California Constitution. On August 16, 2006, the Santa Cruz County  
22 Superior Court ordered each of those citations dismissed with prejudice on the grounds that  
23 Vehicle Code section 27803 is unconstitutionally void for vagueness as applied by the officers  
24 who cited plaintiff QUIGLEY. A true copy of that order is attached to this complaint as Exhibit  
25 2 and incorporated by this reference.

26 23. Each of the other plaintiffs has been cited for violation of the helmet law, and  
27 each has had one or more citations dismissed on the ground that the CHP or arresting police  
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1 agency has failed to carry its burden of proving that the helmet in question did not comply with  
2 the law.

3 24. The CHP periodically and frequently arrests plaintiffs and others for violation of  
4 Vehicle Code section 27803 without having specific, articulable, objective facts that show:  
5 (1) that a specific helmet does not comply with FMVSS 218; and (2) that the motorcycle driver  
6 or passenger wearing such helmet knows that the helmet does not comply with FMVSS 218.

7 25. Unless enjoined by this Court, the CHP threatens to continue arresting plaintiffs  
8 and others under the Motorcycle Helmet Law without specific, articulable, objective facts by  
9 which an officer can determine whether a particular helmet complies with Vehicle Code section  
10 27802 and FMVSS 218. The CHP is ignoring the Superior Court order attached as Exhibit 2.

11 26. Plaintiffs do not have an adequate remedy at law because, unless enjoined by this  
12 Court, the CHP and other law enforcement agencies will continue to stop and to arrest them  
13 based on officers' subjective beliefs about plaintiffs' helmets rather than on the basis of specific,  
14 articulable facts.

15 27. In view of the absence of specific, articulable safety helmet standards, plaintiffs  
16 will be stopped repeatedly in violation of their Fourth Amendment rights, and will face multiple  
17 citations for which they will have to go to court repeatedly to establish the unconstitutionality of  
18 the Motorcycle Helmet Law as applied by the CHP.

19 **Allegations Concerning Priority in Trial Setting**

20 28. Plaintiff QUIGLEY is ill with stage IV lymphoma, and there is substantial  
21 medical doubt that he will survive beyond six months, and therefore the Court has discretion to  
22 give this case priority in trial setting under Code of Civil Procedure section 36, subdivision (d).

23 29. Plaintiffs are seeking declaratory relief, and therefore this case is entitled to  
24 priority under Code of Civil Procedure section 1062.3.

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27 **Prayer for Relief**

1 Based on the allegations above, plaintiffs respectfully pray for:

2 1. A declaration that the Motorcycle Helmet Law is unconstitutionally void for  
3 vagueness as applied by the CHP.

4 2. An injunction prohibiting enforcement of the Motorcycle Helmet Law as applied  
5 by the CHP unless and until the CHP develops articulable, objective standards to determine  
6 whether a particular motorcycle helmet complies with Vehicle Code section 27803.

7 3. Attorney fees and costs in prosecuting this action, under Code of Civil Procedure  
8 section 1021.5; and

9 4. Such other and further relief as the Court finds just and proper.

10 Dated: November 7, 2006

Respectfully submitted,

11 LASCHER & LASCHER,  
12 A Professional Corporation,  
13 WENDY COLE LASCHER

14 By: Wendy Cole Lascher  
15 Attorneys for Plaintiffs  
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VERIFICATION

STATE OF CALIFORNIA )

COUNTY OF VENTURA )

RICHARD QUIGLEY says:

I am one of the plaintiffs in this action. I have read the foregoing petition and knows the contents thereof, and that the same is true of my own knowledge, except as to matters which are stated therein on information and belief, and as to those matters I believe it to be true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and was executed at Ventura, California, on November 7, 2006.

  
RICHARD QUIGLEY