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8 **THE SUPERIOR COURT OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SANTA CRUZ**
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11 People of the State of California,)	CASE #: 3WM018538, 4WM034081,
)	4WM021512, 4WM023363,
12 Plaintiff.)	4SM028271, 4SM021812, 4SM021512,
)	4SM023894, 4SM044470
)	&5SM085642
13)	
14 vs.)	
)	CORRECTION OF ERRATUM,
15 Richard J. Quigley)	ADDITIONAL EVIDENCE,
)	AND DEFENDANT'S
16)	SUPPLEMENTAL DECLARATION
17 Defendant.)	IN SUPPORT OF A
<hr/>)	MOTION TO DISMISS

18
19 COMES NOW THE DEFENDANT, Richard Quigley, to correct an erratum in
20 earlier pleadings, bring forth additional evidence, and make this supplemental
21 declaration in support of a motion to dismiss the citations in the above-captioned
22 case(s), declaring the following under penalty of perjury:

23 **CORRECTION OF ERRATUM**

24 In footnote 2, on page 6, of the Defendant's Points and Authorities in Sup-
25 port of Motion to Dismiss, near the bottom of the first column, the Defendant
26 wrote: "The 9th Circuit's use of the phrase 'DOT approved' was pivotal to *uphold-*
27 *ing* the first part of the injunction, when as has been thoroughly demonstrated with
28 the evidence package supporting this motion, the phrase 'DOT approved' has no

1 meaning in fact or in law” (*emphasis added*) which should have read “The 9th
2 Circuit’s use of the phrase ‘DOT approved’ was pivotal to their *setting aside* the
3 first part of the injunction, when as has been thoroughly demonstrated with the
4 evidence package supporting this motion, the phrase ‘DOT approved’ has no
5 meaning in fact or in law.” (*emphasis added*)

6 Had it not been for their reliance on the belief in a “DOT approved” helmet,
7 there was no other basis to overrule the first portion of the District Court’s injunction.
8 (NOTE: The 9th made the same mistake in the case of U.S. v. McNeely (990 F.2d
9 1263) in 1992, upholding the conviction of McNeely, approving the traffic stop
10 which led to the discovery of contraband on the reasoning: “Oregon State Trooper
11 Jed Stone testified to the following events at the suppression hearing. While sitting
12 by a roadway, Trooper Stone saw McNeely drive by on a motorcycle. He noticed
13 that McNeely was wearing a short motorcycle helmet of a type which the trooper
14 knows from experience and training is often not Department of Transportation
15 approved, as required by Oregon state law.” It’s unfortunate for McNeely that his
16 attorney did not know what this court has come to know, and that is that there is
17 no such thing as a type of helmet that is “Department of Transportation ap-
18 proved.”)

19 The defendant is certain the 9th Circuit Court of Appeals could be asked
20 what they meant when they used the phrase, but he does not know how that could
21 be accomplished. The answer would most certainly be enlightening.

22 **ADDITIONAL EVIDENCE**

23 **Additional evidence (by reference to DA’s brief filed on January 13, 2005)**

24 In reading through some of the briefs filed in this case, the defendant came
25 across a brief that is on point to the motion presently before this court, and which
26 demonstrates the undermining effect of the belief in the validity of the phrase
27 “DOT approved safety helmet” as it pertains to the case(s) currently before this
28 court.

1 In their motion for reconsideration, filed with the court on January 13, 2005,
2 on page 3, starting at line 5, the District Attorney wrote:

3 **“Defendant submitted an exhibit listing over 30 instances**
4 **wherein he was cited for driving a motorcycle without an**
5 **approved safety helmet.”**

6 Further explaining her belief in the need for the defendant to wear an “ap-
7 proved helmet,” and further defining what she means by “approved helmet,” she
8 continued on page 3, starting at line 18:

9 **“Third, Defendant is excluded from correction by VC**
10 **40610(b)(3) in that he does not agree to promptly correct the**
11 **violation. . . . He has made it abundantly clear that he has no**
12 **intention of wearing a hard shell, DOT approved, safety**
13 **helmet which would comply with the statute.”**

14 It is apparent that the District Attorney has relied, and continues to rely, on
15 the belief that the Department of Transportation approves helmets, that the helmet
16 law statute requires that a rider wear a DOT approved helmet, and that the inabil-
17 ity of the defendant to wear a DOT approved helmet is based on the defendant’s
18 stubbornness, not on the realization that the phrase “DOT approved” has no mean-
19 ing in fact or in law, and should not be used.

20 The defendant has repeatedly attempted to get the District Attorney to stipu-
21 late that the DOT does not approve helmets, but with no success.

22 Defendant believes, and asserts here, that the District Attorney refuses to
23 stipulate to the fact that there is no such thing as a “DOT approved safety helmet”
24 because the moment that fact is realized, it becomes apparent that there is no
25 objective standard for helmet law enforcement or compliance, and that it is there-
26 fore impossible for the defendant to know, with the legal certainty it takes to de-
27 fend an allegation of violation of the statute, what is required instead.

28 Maybe this matter has finally reached the point where it is appropriate for

1 the District Attorney to stipulate that the phrase “approved helmet” is synonymous
2 with “DOT approved helmet,” and that the phrase “DOT approved helmet” should
3 not be used in that it has no meaning in fact or in law.

4 **Additional evidence (by decralation):**

5 On April 18, 2006, the following article was published in the “Cops and
6 Courts” section of the *Santa Cruz Sentinel*:

7 **Man, 64, injured in collision**

8 A 64-year-old man on a motorcycle suffered major injuries Monday
9 afternoon following a broadside collision with an SUV on Brommer
10 Street.

11 The accident occurred at 12:45 p.m. near Hope Way. It is still under
12 investigation by the California Highway Patrol and the names of those
involved were not available.

13 Officer Grant Boles said a 22-year-old man driving a 1991 Ford
14 Explorer eastbound on Brommer Street turned left into the path of the
motorcyclist who was westbound.

15 The motorcyclist was flown to a hospital for medical treatment. He
16 was not wearing an approved helmet, according to CHP Officer Grant
Boles.

17 “Not wearing an approved helmet is not only dangerous, it’s illegal,”
18 Boles said.

19 The SUV driver was uninjured; his vehicle suffered moderate
20 damage.

21 Through the course of my investigation to establish why the phrase “ap-
22 proved helmet” was used in this article, or why the reference to the helmet was
23 made at all – in that it was the inattentive driver that was responsible for the crash,
24 NOT the headgear of the motorcycle rider – I determined that the helmet issue was
25 raised in conjunction with the CHP’s policy of including a “lesson learned” element
26 in all accident reports where possible (as a device to make reporting of accidents
27 serve the additional function of pointing out safety issues relating to the accident).

28 When I talked directly with Officer Boles and asked him, “Who approves

1 helmets?”, his answer was “the Department of Transportation.”

2 So, rather than the “lesson learned” from this report being that most acci-
3 dents involving a motorcycle and another vehicle, are the fault of the other vehicle,
4 and that of those, the vast majority are the result of a motorist turning left in front
5 of, or pulling out in front of, a motorcyclist; what the public got instead was one
6 more reason to believe that in order to be in compliance with California’s helmet
7 law, one must wear a (DOT) approved helmet.

8 What is even worse is that, if that particular accusation made the actual acci-
9 dent report (which I cannot find out since I do not know the rider, and the CHP will
10 not make the report available to me as a non-party to the crash), the motorcyclist is
11 going to have to fight off allegations of contributory negligence with regard to any
12 head injury he had/has suffered for which he would otherwise be compensated.

13 **Additional evidence (by declaration and Exhibit “VV”):**

14 On April 24, 2006, the California Assembly Transportation Committee met
15 and voted on AB-2427 – a bill which, if enacted, would limit those affected by the
16 mandatory helmet use laws to those citizens under the age of 18, along with some
17 other requirements.

18 Included with this bill was a legislative analysis, drafted by Howard Posner,
19 Chief Consultant to the Assembly Transportation Committee, who, under the
20 section entitled “Existing Law,” wrote “Requires riders and drivers to wear an
21 approved helmet when riding on a motorcycle, motor-driven cycle or motorized
22 bicycle.”

23 On Thursday morning, April 27, 2006, I contacted Mr. Posner at 916-319-
24 2093 and asked him who, to his knowledge, approves helmets. Mr. Posner indi-
25 cated that it was his belief that either the California Highway Patrol or the U.S.
26 Department of Transportation approved helmets.

27 I, of course, informed him of the reality that neither agency is empowered to
28 do such of a thing, and that in fact, for all intents and purposes, no one approves

1 helmets – save perhaps a traffic enforcement officer, who, applying his belief in
2 approved helmets, and the construction properties of approved helmets, decides
3 for himself, based on his experience and training, whether a given helmet worn by
4 a motorcyclist would be of a kind likely to be “approved” by the Department of
5 Transportation, or by some other agency of the government.

6 Posner suggested it might have been helpful had I attended the hearing of
7 the Assembly Transportation Committee and made that information known. I
8 explained to Posner that I had made several appearances at the various Transporta-
9 tion Committee hearings over the past decade and a half, only to have whatever
10 information I was able to provide, set aside in favor of the opinion(s) of the Cali-
11 fornia Highway Patrol and other lobbying groups who favored mandatory helmet
12 use laws – that neither I, nor my combined acquaintances, had the money to pay
13 (bribe) the Legislature to consider our point(s) of view. I informed him of our
14 belief that the only branch of government beyond sale to the highest bidder was
15 the courts, from which we would continue to seek relief from the betrayal of the
16 Legislative and Executive branches.

17 It is doubtful that Mr. Posner will ever discover (on his own) that it is not
18 “Existing Law,” but *existing enforcement practices*, that requires a rider to wear an
19 “approved helmet” – that *Existing Law* dictates that evidence of certification by
20 the manufacturer of compliance with complex federal standards (a “DOT” sym-
21 bol, present at the time the headgear is obtained) is the *only* requirement of the
22 statute(*Buhl v. Hannigan*), absent competent objective evidence that the helmet
23 has been found to be noncompliant together with evidence of the rider's *actual*
24 *knowledge* or such a finding of noncompliance (*Bianco v. C.H.P.*), and that the
25 courts have found and held that the proposition that the consumer or enforcement
26 officer are required to decide if a helmet is properly fabricated (that the headgear
27 appears, or does not appear, to be of a type approved by the Department of Trans-
28 portation, based on fabrication), is “absurd.” (*Buhl v. Hannigan*)

1 **VERIFICATION**

2 I swear, under penalty of perjury, that the foregoing is true and correct to
3 the best of my knowledge, except as to those things offered on information and
4 belief, and as to those, I believe them to be true.

5 May 1, 2006

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8 Richard J. Quigley, Defendant, pro se

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