



October 15, 2011

Officer Robert Gibbs (P#6796) OFFICER NAMED IN THE ATTACHED CITATION
Sgt. Stewart Emry (P#3758) OFFICER NAMED IN THE ATTACHED CITATION
LAS VEGAS METROPOLITAN POLICE DEPARTMENT
3141 SUNRISE AVENUE
LAS VEGAS, NEVADA 89101

Dear Officer Gibbs and Sgt. Emry,

This letter is a demand for payment in the amount of \$248.50 by each of you for a total amount of \$497.00.

As you will recall, on August 28, 2010, Officer Gibbs cited me for violating NRS 486.231, Nevada's helmet law (Attachment 1). He was unable to tell me what it was about my helmet that made it illegal other than to say it should look like his helmet and said, "It has to be DOT-approved." I attempted to educate Officer Gibbs about the fact that a rider's helmet choice does not constitute probable cause for the issuance of a citation, and the fact that DOT does not approve helmets. Officer Gibbs gave me an unlawful order to remove my LEGAL helmet and demanded I put on a full face helmet that was strapped to the back seat of my motorcycle. That full face helmet was damaged and was an illegal helmet – unlike my smaller helmet which was **100% LEGAL.**

I asked for Officer Gibbs' supervisor, and Sgt. Emry responded. Sgt. Emry refused to look at the helmet in question and sided with Officer Gibbs. Both Officer Gibbs and Sgt. Emry told me to take it to court. (As you may both recall I audio-taped the entire detainment, and I have transcribed the entire audio recording, and will reveal it if necessary.)

A few minutes after getting that citation, I put my LEGAL helmet back on (the one for which Officer Gibbs cited me) and went through a DUI checkpoint that was being held just a few blocks from the place I was cited by Officer Gibbs. At the checkpoint, I was again detained because of my helmet, but released without being searched or cited. (I am in possession of video evidence of this detainment that I will provide if necessary.)

According to LVMPD Policy Manual **6/006.01**, "*Probable cause exists when the **facts** and circumstances **known** to the officer would warrant a **prudent** man in believing a crime had been committed and the accused had committed it.*

COMPLETELY ABSENT PROBABLE CAUSE, Officer Gibbs (sanctioned by what was represented to me as his supervisor, Sgt. Emry) violated my 4th Amendment right to be free from unreasonable searches and seizures in the following manners:

1. I was forced to sign a ticket to avoid going to jail;
2. I was forced to attend an arraignment to avoid going to jail;
3. I was forced to attend a pretrial (where I plead NOT GUILTY) to avoid going to jail.
4. I was forced to attend my trial to avoid going to jail.
5. I was COERCED to put on a damaged full-face helmet under the threat that my motorcycle would be impounded.

At the trial, my helmet case was dismissed. So, because the two of you were unwilling to examine and understand Nevada's helmet law, you both abused your authority and forced me to have to defend myself. Since I could not afford an attorney, and since I did not qualify for a court-appointed attorney, I educated myself about how to defend myself in this matter, and the case was dismissed. Your actions in my case were in violation of 42 USC Section 1983.

I am in possession of Interrogatories, dated November 16, 2006, in which two official agents representing LVMPD, under oath, stated that LVMPD does not train its officers to know how to identify a legal helmet. (Attachment 2.)

A ruling by the United States 9th Circuit Court of Appeals, *Easyriders v. Hannigan*, (Attachment 3) established that helmets do not constitute probable cause. In a case that arose from the State of California, which has a universal helmet law like Nevada's, the ruling read in relevant part,

"...citation could only be issued when helmet did not bear certification of compliance or when rider actually knew that helmet did not conform to federal standards; (2) under such reading of law, policy in question violated Fourth Amendment; and (3) motorcyclists were entitled to permanent injunction.

Judgment granted; permanent injunction issued."

I am also in possession of an LVMPD administrative notice dated May 6, 1994, (Attachment 4) which directs its officers as follows, "***If an operator or passenger of a motorcycle is not wearing any protective headgear, they should continue to be cited***

for violating NRS 486.231. However, if a "skullcap" or other non-D.O.T. or D.M.V. approved helmet is being used, they should not be cited."

I know of zero helmet convictions in your jurisdiction for any person who has ever challenged a helmet citation for their choice of head gear. Therefore, how is it that any officer can know with certainty that a motorcyclist's headgear is not legal? Absent any concrete evidence of known trial convictions, helmet citations by LVMPD officers are arbitrary and capricious actions that blatantly violate civil liberties and I was thereby victimized.

Your abuse of your authority caused me a great deal of time, inconvenience, and money. In light of the fact that I could not afford an attorney to defend me, and in light of the fact that the prosecution was not seeking jail-time for my "offense," I was not entitled to a court-appointed attorney. Therefore, I had to labor for months to educate myself and defend myself in pro per.

I have obtained three estimates (Attachment 5) for what it would have cost me to retain an attorney to defend my NOT GUILTY plea. One attorney quoted \$7,500 to take the case to trial, another \$5,000, and a third believed he could get the helmet citation dismissed but was unwilling to take the case to trial. His quote to attempt to get the case dismissed was "at least \$400."

Further, I incurred a \$97 fee (Attachment 6) in obtaining discovery to prepare for my case. Therefore, I am hereby demanding compensation in the amount of \$497 to be divided equally between Officer Gibbs and Sgt. Emry.

Sgt. Emry stated on my recorder that he was unable to delete the citation. He said,

"If he gives you a ticket for no helmet, or an unauthorized helmet, non DOT helmet, then he believes that helmet is not a DOT authorized helmet that can be used in the State of Nevada I'm going to have to go with that. I can look at the helmet and I'm gonna say, 'is that what you say this is illegal?' and he's gonna say 'yes,' then I'm gonna have to say, 'you're gonna have to go to court.' Once that ticket is written, once he has given you that ticket, the only way that that ticket is gonna be taken out of the system is you have to go to court, and you have to see a judge, and you have to deal with that. Once it's written, it can't be undone."

If this is true, then I hereby demand that Officer Gibbs compensate me the full \$497.00.

Please call me within 10 days to make arrangement for payment. Or send me a check to my below address. Otherwise, I will have no other option than to pursue a Small

Claims Court action. I will request additional reimbursement for the costs I will incur as a result of having to file a court action.

Sincerely,

Lillian Gonzalez
5841 E. Charleston Blvd., #230-422
Las Vegas, Nevada 89142

702-417-6260

Attachments:

1. Citation
2. Interrogatories
3. *Easyriders vs. Hannigan* ruling
4. Administrative LVMPD Notice
5. Attorney Retainer Fee Quotations
6. Receipt of Discovery Payment

Clark County Regional Misdemeanor Citation

Citation #: E10240221506796

Defendant is: an Adult

Event #:

This is a traffic citation

Accident occurred: N

Violation occurred in a school zone: N

Violation resulted in injuries: N

Officer's Report: N Crime Report: N

Defendant's Details

Name: GONZALEZ, LILLIAN

Address: 813 COASTAL DREAMS

City: North Las Vegas, State: NV, Zip: 89031

Date of Birth: 03/09/1961

Origin: H, Sex: F

Height: ft in, Weight: lbs

Hair: , Eyes:

SSN: , DL: 1402239092

DL State NV, DL Class: C

DL Exp Date: 03/09/2012

DL Restrictions:

D.L Endorsements:

Violation Date/Time: 3/28/10 10 PM

Date of Issuance: 08/28/2010

Violation Location: Maryland Pkwy At

University Ave

Reason for stop: Traffic Stop

Vehicle Information

Veh No: TGRLIL State: NV

VIN:

Veh Year: 2005 Make: pola

Veh Type: MC Model:

Veh ExpDt: 09/12/2010 Color: Multi

Reg Owner: GONZALEZ, LILLIAN

Reg Owner Addr: 813 COASTAL DREAMS

Reg Owner City: North Las Vegas

Reg Owner State: NV Zip: 89031

Violation Information

Headgear - glasses or windscreens - helmets to be fastened

Offense Code: 1307 (Bail: C)

To Wit: had a very small disk approximately 4-6 inches round and 1/3 inch thick on head.

Violation occurred in a construction zone while workers present: N

School Zone: N

Collision: N

Alleged Speed:

Speed Limit:

* Officer Badge: 6796
Officer Name: Gibbs, Robert
Department: LVMPD V4983469
Officer 2:

OFFICER'S SIGNATURE



Appearance Required

You are hereby ordered to appear to answer the above charges in the

Las Vegas Justice Court

200 Lewis Ave.

Las Vegas, NV 89155

MAIL: PO Box 552511

Las Vegas, NV 89155-2511

Phone: 671-3444

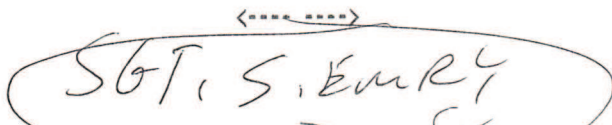
Phone: 877-671-3183 (toll free)

on Sep/27/2010 during business hours.

Without admitting having committed each of the above infractions / offenses, I hereby promise to respond as described on this notice and waive my right to be taken immediately before a magistrate.

Interpreter: N, Language: English

DRIVER'S SIGNATURE

<----->


Reg Owner City: North Las Vegas
Reg Owner State: NV Zip: 89031

Violation Information

Headgear - glasses or windscreens -
helmets to be fastened
Offense Code: 1307 (Bail: C)
To Wit: had a very small disk
approximately 4-6 inches round and 1/3
inch thick on head.

Violation occurred in a construction
zone while workers present: N
School Zone: N
Collision: N
Alleged Speed:
Speed Limit:

* Officer Badge: 6796
Officer Name: Gibbs, Robert
Department: LVMPD V4933469
Officer 2:

OFFICER'S SIGNATURE



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taken immediately before a magistrate.

Interpreter : N, Language: English

DRIVER'S SIGNATURE

←-----→
SGT. S. EMERY
3758

M. CHARLTON # 9337

Event # 4562

1 DAVID ROGER
District Attorney
2 CIVIL DIVISION
State Bar No. 002781
3 By: MITCHELL M. COHEN
Deputy District Attorney
4 State Bar No. 001506
500 South Grand Central Pkwy.
5 P. O. Box 552215
Las Vegas, Nevada 89155-2215
6 (702) 455-4761
Fax (702) 382-5178
7 Attorneys for Attorney for Defendants
8 LAS VEGAS METROPOLITAN POLICE DEPARTMENT,
SHERIFF BILL YOUNG and ASSISTANT
9 SHERIFF MICHAEL ZAGORSKI

10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

12 BIKERS OF LESSER TOLERANCE)
(BOLT), STEVE BIANCO, RICHARD)
13 QUIGLEY,)
14 Plaintiffs,)
15 vs.)
16 LAS VEGAS METROPOLITAN POLICE)
DEPARTMENT; SHERIFF BILL YOUNG;)
17 ASSISTANT SHERIFF MICHAEL)
ZAGORSKI,)
18 Defendants.)
19

Case No: CV-S-04-1144-KJD (PAL)

20 DEFENDANTS' ANSWERS TO PLAINTIFFS' SPECIALLY PREPARED
21 INTERROGATORIES (SET ONE)

22 COME NOW, Defendants LAS VEGAS METROPOLITAN POLICE
23 DEPARTMENT, SHERIFF BILL YOUNG and ASSISTANT SHERIFF MICHAEL
24 ZAGORSKI, by and through their attorneys DAVID ROGER, District Attorney, by
25 MITCHELL M. COHEN, Deputy District Attorney and Answers Plaintiffs' Specially
26 Prepared Interrogatories to Defendants pursuant to Rule 33 of the Federal Rules of Civil
27 Procedure as follows:

28

1 **Interrogatory No. 1:**

2 Please identify all persons who participated in the preparation of your responses to
3 these interrogatories.

4 **Answer to Interrogatory No. 1:**

5 Sergeant Steven V. Wholey, P#4926
6 Administrative Sergeant
7 Transportation Safety Bureau
8 Las Vegas Metropolitan Police Department
9 2300 East St. Louis Avenue
10 Las Vegas, Nevada 89104
11 (702) 828-3540

12 Toni Pond
13 Crime Analyst II
14 Transportation Safety Bureau
15 Las Vegas Metropolitan Police Department
16 2300 East St. Louis Avenue
17 Las Vegas, Nevada 89104
18 (702) 828-5784

13 **Interrogatory No. 2:**

14 Please describe in detail any and all training you have received regarding the
15 fabrication of motorcycle safety headgear.

16 **Answer to Interrogatory No. 2:**

17 The Las Vegas Metropolitan Police Department ("LVMPD") does not provide
18 officers with training specifically regarding the fabrication of motorcycle safety helmet gear.

19 **Interrogatory No. 3:**

20 Please describe in detail any and all training, you, or anyone else, provide to LVMPD
21 officers regarding the fabrication of motorcycle safety headgear.

22 **Answer to Interrogatory No. 3:**

23 See answer to Interrogatory No. 2.

24 **Interrogatory No. 4:**

25 Is the training described in your response to interrogatory No 3 required of all
26 LVMPD officers?

27 **Answer to Interrogatory No. 4:**

28 See answer to Interrogatory No. 2.

1 **Interrogatory No. 5:**

2 Does the law in Nevada require that motorcyclists wear D.O.T. approved headgear?

3 **Answer to Interrogatory No. 5:**

4 Objection, the interrogatory calls for a legal conclusion as to which the law speaks for
5 itself. See, NRS 486.231; NRS 486.381; NAC 486.015; 49 C.F.R. § 571.218; and 49 C.F.R.
6 § 571.218 (S5.6.1.e) (manufacturer's certification that the helmet conforms to Federal motor
7 vehicle safety standards).

8 **Interrogatory No. 6:**

9 Describe in detail what is D.O.T. approved headgear.

10 **Answer to Interrogatory No. 6:**

11 Objection, the interrogatory calls for a legal conclusion as to which the law speaks for
12 itself. See, 49 C.F.R. § 571.218; and 49 C.F.R. § 571.218 (S5.6.1.e) (manufacturer's
13 certification that the helmet conforms to Federal motor vehicle law).

14 **Interrogatory No. 7:**

15 Describe in detail how an LVMPD officer determines, at the scene of a traffic stop,
16 whether or not motorcycle headgear is D.O.T. approved.

17 **Answer to Interrogatory No. 7:**

18 LVMPD officers do not determine if motorcycle headgear is D.O.T. approved.
19 Officers examine motorcycle headgear to identify helmets that do not meet the federal safety
20 standards adopted by the State of Nevada. Officers look at safety stickers, manufacturer's
21 labeling, and construction and design of the helmet, as more fully set forth in US D.O.T.
22 brochure, "How to Identify Unsafe Motorcycle Helmets" and Nev. Atty. Gen. Op. 2002-41
23 (November 5, 2002). See, Response to Request for Production of Documents No. 6.

24 **Interrogatory No. 8:**

25 Is it sufficient to comply with the Nevada helmet law if a motorcyclist wears headgear
26 bearing a D.O.T. sticker?

27

28

1 **Answer to Interrogatory No. 8:**

2 Objection, the interrogatory calls for a legal conclusion as to which the law speaks for
3 itself. See, NRS 486.231; NRS 486.381; NAC 486.015; 49 C.F.R. § 571.218. I have seen
4 incidents where stickers were purchased and placed on non-compliant helmets.

5 **Interrogatory No. 9:**

6 Has an LVMPD officer ever cited a motorcyclist for violation of the helmet law even
7 though the rider wore headgear bearing a D.O.T. sticker?

8 **Answer to Interrogatory No. 9:**

9 The Respondent has insufficient knowledge or information to answer this
10 interrogatory.

11 **Interrogatory No. 10:**

12 If your response to interrogatory No. 9 is in the affirmative, please describe in detail
13 each such citation and the reason for the issuance.

14 **Answer to Interrogatory No. 10:**

15 See answer to Interrogatory No. 9.

16 **Interrogatory No. 11:**

17 Do you maintain a list of Nevada helmet law compliant headgear by manufacturer
18 and model number?

19 **Answer to Interrogatory No. 11:**

20 No. The LVMPD does not maintain annual federal lists of helmet test data. See,
21 Response to Request for Production of Documents, No. 3. (FMVSS 218 Helmet Test Data
22 for FY 2005; FMVSS 218 Helmet Test Data for FY 2004; FMVSS 218 Helmet Test Data for
23 FY 2003. A list is available on the Internet at the federal site. (NHTSA.dot.gov).

24 **Interrogatory No. 12:**

25 Do you maintain a list of Nevada helmet law non-compliant headgear by
26 manufacturer and model number?

27 **Answer to Interrogatory No. 12:**

28 See answer to Interrogatory No. 11.

1 **Interrogatory No. 13:**

2 Are the lists described in your responses to interrogatories No. 11 and 12 available to
3 the public?

4 **Answer to Interrogatory No. 13:**

5 Yes.

6 **Interrogatory No. 14:**

7 What is the maximum fine and penalty for violating Nevada's helmet law?

8 **Answer to Interrogatory No. 14:**

9 Objection, the interrogatory calls for a legal conclusion as to which the law speaks for
10 itself. See, NRS 486.231; NRS 486.381; NRS 193.150.

11 **Interrogatory No. 15:**

12 Describe in detail how an LVMPD officer determines, at the scene of a traffic stop,
13 whether or not a motorcyclist's headgear complies with the Nevada helmet law?

14 **Answer to Interrogatory No. 15:**

15 See answer to Interrogatory No. 7.

16 **Interrogatory No. 16:**

17 Identify fully every expert whom you anticipate calling as a witness in this case,
18 including the substance of the facts and opinions to which the expert is expected to testify.

19 **Answer to Interrogatory No. 16:**

20 The LVMPD has not identified an expert witness at this time.

21 **Interrogatory No. 17:**

22 Describe in detail your response to a motorcyclist who inquires how to comply with
23 certainty with the Nevada helmet law.

24 **Answer to Interrogatory No. 17:**

25 See answer to Interrogatory No. 7.

26 **Interrogatory No. 18:**

27 If a motorcyclist is wearing headgear that they assert is a helmet, what criteria is used
28 by an LVMPD officer to decide if that rider can be cited for violating Nevada's helmet law?

1 **Answer to Interrogatory No. 18:**

2 See answer to Interrogatory No. 7.

3 **Interrogatory No. 19:**

4 Does any Nevada law empower an LVMPD officer to take into custodial arrest a
5 motorcyclist who, in his judgment, is not wearing headgear that complies with the law?

6 **Answer to Interrogatory No. 19:**

7 Objection, the interrogatory calls for a legal conclusion as to which the law speaks for
8 itself. See, NRS 486.231; NRS 486.381; NAC 486.015; 49 C.F.R. § 571.218; NRS 193.150.

9 **Interrogatory No. 20:**

10 Does any Nevada law empower an LVMPD officer to impound the motorcycle of a
11 rider who, in his judgment, is not wearing headgear that complies with the law?

12 **Answer to Interrogatory No. 20:**

13 Objection, the interrogatory calls for a legal conclusion as to which the law speaks for itself.
14 See, NRS 484.397 (police officer authorized to remove certain vehicles).

15 **Interrogatory No. 21:**

16 Identify any and all agencies, other than the D.O.T., that approves motorcycle
17 helmets.

18 **Answer to Interrogatory No. 21:**

19 Respondent is aware of at least two private organizations which test motorcycle
20 headgear: the Snell Memorial Foundation (Snell) and the American National Standards
21 Institute (ANSI). See, Response to Request for Production of Documents, No. 6.

22 **Interrogatory No. 22:**

23 Does the Nevada helmet law empower an LVMPD officer to cite a motorcyclist
24 wearing a novelty helmet?

25 **Answer to Interrogatory No. 22:**

26 See answer to Interrogatory No. 19.

27 **Interrogatory No. 23:**

28 Describe in detail your criteria for determining what is a novelty helmet.

1 **Answer to Interrogatory No. 23:**

2 The LVMPD does not determine what is a novelty helmet. LVMPD officers examine
3 motorcycle headgear to identify helmets that do not meet the federal safety standards
4 adopted by the State of Nevada. See answer to Interrogatory No. 7.

5 **Interrogatory No. 24:**

6 Is it a violation of the Nevada helmet law to wear a helmet that does not bear a D.O.T.
7 sticker?

8 **Answer to Interrogatory No. 24:**

9 Objection, the interrogatory calls for a legal conclusion as to which the law speaks for
10 itself. See, NRS 486.231; NRS 486.381; NAC 486.015; 49 C.F.R. § 571.218.

11 **Interrogatory No. 25:**

12 Clearly define what a motorcyclist must wear in order to comply with the Nevada
13 helmet law.

14 **Answer to Interrogatory No. 25:**

15 Objection, the interrogatory calls for a legal conclusion as to which the law speaks for
16 itself. See, NRS 486.231; NRS 486.381; NAC 486.015; 49 C.F.R. § 571.218.

17 DATED this _____ day of November, 2006.

18 DAVID ROGER
19 DISTRICT ATTORNEY

20 By: _____
21 MITCHELL M. COHEN
22 Deputy District Attorney
23 CIVIL DIVISION
24 State Bar No. 001506
25 500 S. Grand Central Pkwy. 5th Flr.
26 P. O. Box 552215
27 Las Vegas, Nevada 89155-2215
28 Attorney for Defendants
Las Vegas Metropolitan Police
Department, Sheriff Bill Young and
Assistant Sheriff Michael Zagorski

27

28

VERIFICATION

STATE OF NEVADA)
COUNTY OF CLARK) ss.

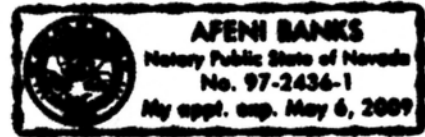
SERGEANT STEVEN J. WHOLEY, being first duly sworn, upon oath says:

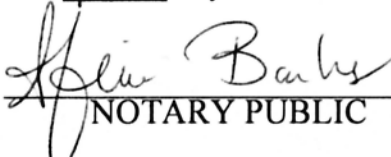
I am the Administrative Sergeant for the Transportation Safety Bureau of the Las Vegas Metropolitan Police Department, in the above-entitled action;

I have read the foregoing **Defendants' Answers to Plaintiffs' Specially Prepared Interrogatories (Set One)** and know the contents thereof; that the same is true of my own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters, I believe it to be true.


SERGEANT STEVEN J. WHOLEY

SUBSCRIBED and SWORN to me before me this 16th day of November, 2006.





NOTARY PUBLIC

CERTIFICATE OF MAILING

I hereby certify that on the 16th day of November, 2006, I deposited in the United States Mail, postage prepaid, at Las Vegas, Nevada, enclosed in a sealed envelope, a copy of the above and foregoing **Defendants' Answers to Plaintiffs' Specially Prepared Interrogatories to Defendants (Set One)** addressed as follows:

KATE WELLS
2600 FRESNO STREET
SANTA CRUZ CA 95062
Attorney for Plaintiffs
**Bikers of Less Tolerance (BOLT),
Steve Bianco, and Richard Quigley**


An Employee of the Clark County District Attorney's Office – Civil Division

United States District Court Southern District of California

San Diego, California
May 25, 1995

EASYRIDERS FREEDOM F.I.G.H.T.,
an unincorporated association of
motorcyclists, et al.,

Case No.93-0807-J
(CM)

Plaintiffs,

Order Granting
Summary Judgement in
favor of Plaintiffs on
request for Permanent
Injunction; issuing
Permanent Injunction

v.

MAURICE HANNIGAN, as
Commissioner of the California
Highway Patrol, et al.,

Defendants.

California motorcyclists brought s 1983 action seeking permanent injunction against California Highway Patrol's enforcement of policy allowing officers to stop motorcyclists and issue citations for substandard helmets based solely on officer's subjective opinion of whether helmet would, if tested, conform to federal safety standards applicable under California mandatory motorcycle helmet law. On motion for summary judgment, the District Court, Jones, J., held that: (1) under California courts' interpretation of law, citation could only be issued when helmet did not bear certification of compliance or when rider actually knew that helmet did not conform to federal standards; (2) under such reading of law, policy in question violated Fourth Amendment; and (3) motorcyclists were entitled to permanent injunction.

Judgment granted; permanent injunction issued.

[1] AUTOMOBILES

Motorcyclist will violate California mandatory motorcycle helmet law by wearing substandard helmet in two situations: (1) where helmet does not bear certification of compliance at time of sale or (2) where helmet does bear certification but (a) helmet has been shown not to conform with federal safety standards, and (b) person being cited has actual knowledge of a showing of nonconformity with federal standards; therefore, law enforcement officials should issue citation for violation of statute only when: (1) helmet does not bear certification of compliance or (2) when rider actually knows that helmet was purchased with certification of compliance has been shown not to conform to federal standards. 49 C.F.R. s 571.218; West's Ann.Cal.Vehicle Code s 27803.

[1] AUTOMOBILES

Motorcyclist will violate California mandatory motorcycle helmet law by wearing substandard helmet in two situations: (1) where helmet does not bear certification of compliance at time of sale or (2) where helmet does bear certification but (a) helmet has been shown not to conform with federal safety standards, and (b) person being cited has actual knowledge of a showing of nonconformity with federal standards;

ATTACHMENT 3 - Page 1 of 7

therefore, law enforcement officials should issue citation for violation of statute only when: (1) helmet does not bear certification of compliance or (2) when rider actually knows that helmet was purchased with certification of compliance has been shown not to conform to federal standards. 49 C.F.R. s 571.218; West's Ann.Cal.Vehicle Code s 27803.

[2] ARREST

Fourth Amendment requires that law enforcement officials must have probable cause before making warrantless arrest. U.S.C.A. Const.Amend. 4.

[3] ARREST

Under California Penal Code, issuance of infraction citations such as those issued under motorcycle helmet law constitutes arrest. U.S.C.A. Const.Amend. 4; West's Ann.Cal.Vehicle Code s 27803; West's Ann.Cal.Penal Code s 53.5.

[4] AUTOMOBILES

Fourth Amendment requires that law enforcement official have reasonable suspicion before making traffic stop. U.S.C.A. Const.Amend. 4.

[5] AUTOMOBILES

California law enforcement officer acts contrary to confines of Fourth Amendment (1) when issuing citation for substandard motorcycle helmet without probable cause to believe that motorcyclist has violated California helmet law as that law is interpreted by California courts or (2) when making traffic stop without reasonable suspicion of same. U.S.C.A. Const.Amend. 4; West's Ann.Cal.Vehicle Code s 27803.

[6] CIVIL RIGHTS

Federal court may issue injunction under s 1983 prohibiting current enforcement methods of state law enforcement agency when those enforcement methods violate Federal Constitution. 42 U.S.C.A. s 1983.

[7] CIVIL RIGHTS

California motorcyclists were entitled to permanent injunction against California Highway Patrol's official policy of allowing officers to stop motorcyclists and issue citations under helmet law for substandard helmets based solely on officer's subjective opinion of whether helmet would, if tested, conform to federal safety standards; based on California courts' interpretation of helmet law, both issuance of citation and effectuation of stops under that policy would violate Fourth Amendment, and motorcyclists lacked alternative means to remedy injuries caused by Highway Patrol's conduct. U.S.C.A. Const.Amend. 4; 42 U.S.C.A. s 1983; West's Ann.Cal.Vehicle Code s 27803.

L. Louis Raring, Raring and Lipoff, Costa Mesa, CA, for plaintiffs.
Jill P. Armour, Atty. Gen., Office of the Atty. Gen., State of Cal., San Diego, CA, for state defendants.
C. Ellen Pilsecker, Office of County Counsel, San Diego, CA, for defendants Jim Roache, Brent Wagner aka Brent Walker.
Thomas J. Feeley, City of Huntington Beach and Stone & Feeley, Los Angeles, CA, for defendants Ronald Lowenberg, as Chief of Police of the City of Huntington Beach, Lloyd Edwards, M.P. Kelly, as an officer of the Huntington Beach Police Dept.

**ORDER GRANTING SUMMARY JUDGMENT
IN FAVOR OF PLAINTIFFS ON REQUEST FOR PERMANENT
INJUNCTION;
ISSUING PERMANENT INJUNCTION.**

Decision by JONES, District Judge.

This case is before the court on a motion for summary judgment on plaintiffs' request that the court issue a permanent injunction against officials of the California Highway Patrol (CHP). Plaintiffs are motorcyclists who have been issued citations under the California Mandatory Motorcycle Helmet Law, California Vehicle Code s 27803, for wearing helmets that were alleged not to comply with federal safety standards. Plaintiffs ask the court to enjoin defendants, specifically officials of the California Highway Patrol, [\[FN1\]](#) from enforcing the law in an unconstitutional manner.

I. THE HELMET LAW

The California Mandatory Motorcycle Helmet Law, Vehicle Code s 27803, makes safety helmets mandatory for all drivers and passengers of motorcycles. Further, the law requires that a helmet may not be worn unless it meets certain specifications set out in Vehicle Code s 27802. This section states:

The department may adopt reasonable regulations ... for safety helmets ... as it determines are necessary for ... safety.... The regulations shall include ... the requirements imposed by Federal Motor Vehicle Safety Standard No. 218 (49 C.F.R. Sec. 571.218).... Each helmet sold ... shall be conspicuously 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.

Pursuant to section 27802, the Department of the California Highway Patrol has adopted Federal Motor Vehicle Safety Standard No. 218 (FMVSS 218) as its sole standard to determine which helmets may legally be worn in California.

"Motorcycle and motorized bicycle safety helmets governed by Vehicle Code Section 27802 shall meet Federal Motor Vehicle Safety Standard No. 218."
13 California Code of Regulations s 982.

FMVSS 218 is largely a technical standard which focuses on several characteristics of the helmet, many of which can be determined only through laboratory testing. Under the federal regulations, helmet manufacturers are responsible for undertaking their own testing to determine compliance with FMVSS 218. Helmet manufacturers certify that their helmets are in compliance with FMVSS 218 by placing a sticker on the outside of the helmet with the initials "DOT" for "Department of Transportation". 49 C.F.R. s 571.218.

The National Highway Transportation Safety Administration (NHTSA) conducts its own safety testing of selected helmets to determine if they are in fact in compliance with FMVSS 218. If not in compliance, the manufacturers are asked by the United States Department of Transportation to conduct a voluntary recall of the helmet and to stop selling the helmet with the certification affixed.

However, the helmet may still legally be sold without certification as a "novelty." If the manufacturer refuses to voluntarily recall the helmet, the government issues a statement of noncompliance.

In the context of the helmet law, a California court has interpreted section 27802 to mean that "it is clear the law requires only that the consumer wear a helmet bearing a *certification* of compliance." [Buhl v. Hannigan](#), 16 Cal.App.4th 1612, 20 Cal.Rptr.2d 740 (1993). A later court has refined this statement to take into account the situation where a rider knows that a manufacturer certified helmet has been subsequently determined not to comply with FMVSS 218, but nevertheless continues to use the helmet. [Bianco v. California Highway Patrol](#), 24 Cal.App.4th 1113, 29 Cal.Rptr.2d 711 (1994).

Bianco held that "the statement in Buhl that consumer compliance with 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." *Id.* at 1123, 29 Cal.Rptr.2d 711 (emphasis in original).

[1] Based on the foregoing holdings of [Buhl v. Hannigan](#), 16 Cal.App.4th 1612, 20 Cal.Rptr.2d 740 (1993) and [Bianco v. California Highway Patrol](#), 24 Cal.App.4th 1113, 29 Cal.Rptr.2d 711 (1994), a motorcyclist will violate the law by wearing a substandard helmet in two situations:

- (1) where the helmet did not bear a certification of compliance at the time of sale or
- (2) where the helmet did bear a certification but

(A) the helmet has been shown not to conform with federal safety standards and

(B) the person being cited has actual knowledge of a showing of non-conformity with federal standards.

Thus, according to the California courts' interpretation of the helmet law and the regulations promulgated thereunder, law enforcement officials should only issue a citation in two situations: (1) when a helmet does not bear a certification of compliance or (2) when a rider actually knows that a helmet was purchased with a certification of compliance has been shown not to conform to federal standards. In a previous order filed March 15, 1995, this court has held that these guidelines sufficiently narrow law enforcement discretion to overcome any argument that the law is void for vagueness under the Fourteenth Amendment.

II. FINDINGS OF FACT

Plaintiffs ask for an injunction which would prohibit defendants from enforcing the helmet law according to guidelines that do not conform to the law as interpreted by the California courts. According to the court's review of the evidence presented in connection with this motion, the parties do not dispute the fact that defendants cite motorcyclists wearing helmets which bear certifications of compliance, and that the citations are issued without regard to whether the motorcyclist has actual knowledge that a helmet has been shown not to comply with federal standards.

After reviewing the undisputed evidence in this case the court finds that the CHP has a clear official policy of allowing officers to stop motorcyclists and issue citations for substandard helmets based on the officer's subjective opinion of whether the helmet would, if tested, conform to federal safety standards. The CHP has a clear official policy of allowing officers to cite for allegedly substandard helmets regardless of whether the officer has reason to believe that there has been a determination of non-compliance with FMVSS 218 or that the motorcyclist has knowledge that the helmet has been determined not to comply with FMVSS 218.

The court also finds that it is an undisputed fact that plaintiffs have been cited for wearing helmets that CHP officers considered to be in violation of the helmet law, although (1) some of those helmets were in fact never determined to be substandard either through NHTSA testing, independent laboratory testing or a manufacturer recall and (2) of those helmets that had been determined to be in non-compliance, plaintiffs did not have actual knowledge of the determination.

Plaintiffs are unable to conform their conduct to the requirement of the helmet law as enforced by the CHP because they are unable to determine whether a CHP officer will or will not subjectively determine that a certain helmet would not meet FMVSS 218 if tested. Further, because the CHP continues to use its own discretion in determining which helmets are non-conforming and because plaintiffs are frequent motorcyclists wearing a variety of helmets of the type that the CHP has trained its officers likely do not meet federal safety standards, plaintiffs are at real and immediate risk of being cited under the helmet law once again. Based on the foregoing, plaintiffs have standing to bring this action for injunctive relief. See *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983).

The court further finds that it is an undisputed fact the CHP has provided training or information to law enforcement agencies throughout California on how to determine whether a helmet likely would not conform to federal safety standards if tested. Plaintiffs have been cited by law enforcement agencies that follow guidelines that were developed in part with information provided by the CHP. Plaintiffs have also had their helmets confiscated by local law enforcement agencies.

III. CONCLUSIONS OF LAW

[2][3][4][5] The Fourth Amendment requires that law enforcement officials must have probable cause before making a warrantless arrest. *Beck v. Ohio*, 379 U.S. 89, 91, 85 S.Ct. 223, 225, 13 L.Ed.2d 142 (1964). Under California Penal Code section 853.5, the issuance of infraction citations such as those issued under the helmet law, constitutes an arrest. Further, the Fourth Amendment also requires that a law enforcement official have reasonable suspicion before making a traffic stop. See *United States v. Cannon*, 29 F.3d 472 (9th Cir.1994). Thus, a CHP officer acts contrary to the confines of the Fourth Amendment (1) when issuing a citation for a substandard helmet without probable cause to believe that the motorcyclist has violated the helmet law as that law is interpreted by the California courts or (2) when making a traffic stop without reasonable suspicion of the same.

[6] Ample authority exists allowing a federal court to issue an injunction under 42 U.S.C. s 1983 prohibiting the current enforcement methods of a state law enforcement agency when those enforcement methods violate the federal constitution.

The standard for the issuance of a permanent injunction is "the likelihood of substantial and immediate irreparable injury and the inadequacy of remedies at law." *LaDuke v. Nelson*, 762 F.2d 1318, 1330 (9th Cir.1985) (enjoining INS from Fourth Amendment violations), amended 796 F.2d 309 (9th Cir.1985).

Courts have held that the mere fact of a policy violating Fourth Amendment rights establishes that there is irreparable injury, *Community for Creative Non-Violence v. Unknown Agents*, 797 F.Supp. 7, 16 (D.D.C.1992) (enjoining U.S. Marshals Service from Fourth Amendment violations), and that there is an inadequate remedy at law, *Pratt v. Chicago Housing Authority*, 848 F.Supp. 792, 796 (N.D.Ill.1994) (enjoining Housing Authority from Fourth Amendment violations).

[7] The court holds that based on the undisputed facts of this case, plaintiffs have established that they will be irreparably injured if an injunction does not issue because they will continue to be subjected to violations of their Fourth Amendment rights. The court further finds that without injunctive relief there is no other adequate means for plaintiffs to remedy the injuries caused by defendants' conduct.

In issuing an injunction against state law enforcement, this court is mindful of principles of federalism and of its obligation to avoid interfering with state law enforcement unless there is a finding that the state agency has a policy that violates constitutional rights. However, the Supreme Court in *Rizzo v. Goode*, 423 U.S. 362, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976) and *Allee v. Medrano*, 416 U.S. 802, 94 S.Ct. 2191, 40 L.Ed.2d 566 (1974) has established that in certain circumstances, such as those present in this case, federal injunctive relief is proper.

In *Allee*, the Court affirmed an injunction against local law enforcement officials which prevented them from interfering with a union's First Amendment rights by harassing and assaulting union members. The injunction affirmed by the Court did "no more than require police to abide by constitutional requirements" by requiring that the police have "adequate cause" to interfere with union organization, such as the violation of a criminal law or obstruction of walkways. 416 U.S. at 813-14, 94 S.Ct. at 2199. The Court explained that the injunction was proper because there was a persistent pattern of police misconduct.

Isolated incidents of police misconduct under valid statutes would not, of course, be cause for the exercise of a federal court's equitable powers. But we have not hesitated on direct review to strike down applications of constitutional statutes which we have found to be unconstitutionally applied.

Where, as here, there is a persistent pattern of police misconduct, injunctive relief is appropriate. *Id.* at 815, 94 S.Ct. at 2200.

In *Rizzo v. Goode* the Court reversed an injunction against Philadelphia city officials, requiring them to develop a policy for dealing with police misconduct. The Court held that the injunction was improper because there was not a finding by the district court that the defendants had a policy which violated constitutional rights--there were only incidents of misconduct by individual officers. 423 U.S. at 373-77, 96 S.Ct. at 605-07 (1975) However, as in *Allee*, the Court recognized that 42 U.S.C. s 1983 does authorize injunctive relief for constitutional violations and that such an injunction would be proper against state law enforcement when there is an intentional pattern of misconduct.

The Ninth Circuit has recently applied *Rizzo* and *Allee* in a case involving an injunction against the Los Angeles County Sheriffs Department's treatment of residents of a Los Angeles neighborhood. *Thomas v. County of Los Angeles*, 978 F.2d 504 (9th Cir.1992). Though the Ninth Circuit reversed the injunction on the grounds that there was not sufficient support in the record supporting the district court's findings of an official policy and the linking of the mistreatment with the official policy, the court did affirm the concept that "a state law enforcement agency may be enjoined from committing constitutional violations where there is proof that officers within the agency have engaged in a persistent pattern of misconduct." *Id.* at 508.

Other Ninth Circuit cases have approved injunctions against law enforcement under the Fourth Amendment. *Conner v. City of Santa Ana*, 897 F.2d 1487, 1493-94 (9th Cir.1990) affirmed an injunction against a city's warrantless entry onto property to confiscate nuisance automobiles. The court rejected the city's argument that the injunction "impermissibly encroaches upon their police power to make warrantless searches." *Id.* at 1494. In *LaDuke v. Nelson*, 762 F.2d 1318, 1330 (9th Cir.1985), the Ninth Circuit affirmed an injunction against the INS based on the Fourth Amendment, enjoining it from conducting searches of migrant housing without probable cause. The court stated, "The Supreme Court has repeatedly upheld the appropriateness of federal injunctive relief to combat a 'pattern' of illicit law enforcement behavior." *Id.* at 1324.

The court holds that an injunction is proper under the law as set out by the above cases because there is no dispute that the CHP has a policy which allows them to cite motorcyclists without probable cause to believe that the helmet law, as interpreted by the California courts,

is being violated. The CHP has a policy of enforcing the helmet law which violates the Fourth Amendment and which this court will enjoin.

Plaintiffs, as prevailing parties, have moved for attorneys fees pursuant to 42 U.S.C. s 1988. The court will consider the request for attorneys fees upon the filing of a properly noticed and supported motion.

IV. TERMS OF THE INJUNCTION

The terms of the injunction are as follows: Maurice Hannigan, as Commissioner of the California Highway Patrol, Dwight Helmick, as Deputy Commissioner of the California Highway Patrol, and their officers, agents, servants, employees, attorneys, or any of them, and all persons acting in concert with any of the foregoing, are hereby permanently enjoined:

(1) From stopping any motorcyclists for suspected violation of Vehicle Code s 27803 unless there is reasonable suspicion to believe that

(A) the helmet worn by the driver or passenger was not certified by the manufacturer at the time of sale, or

(B) the helmet was certified by the manufacturer at the time of sale and

(i) the person being stopped has actual knowledge of a showing of a determination of non-conformity with federal standards.

(2) From citing any motorcyclist for suspected violation of Vehicle Code s 27803 unless there is probable cause to believe that

(A) the helmet worn by the driver or passenger was not certified by the manufacturer at the time of sale, or

(B) the helmet was certified by the manufacturer at the time of sale and

(i) the person being cited has actual knowledge of a showing of a determination of non-conformity with federal standards.

For the purposes of this injunction, a determination of non-conformity with federal standards is defined as one or more of the following:

(1) a determination of non-compliance issued by the National Highway Transportation Safety Administration or

(2) a manufacturer recall of a helmet because of non-compliance with FMVSS 218 or

(3) other competent objective evidence from independent laboratory testing that the helmet does not meet FMVSS 218.

Maurice Hannigan, as Commissioner of the California Highway Patrol and Dwight Helmick, as Deputy Commissioner of the California Highway Patrol, are further directed to file with the Court and serve on plaintiffs, within fifteen (15) days after the date of entry of this Permanent Injunction, a report in writing and under oath with the full name and address of each enforcement agency that has been previously instructed or informed on the CHP enforcement methods to enable plaintiffs to serve such agencies with copies of this injunction.

This injunction shall remain permanently in force until such time as Vehicle Code sections 27802 or 27803 or the regulations promulgated thereunder are amended or modified to include additional or revised provisions related to helmet compliance or enforcement standards, or until such time as a decision of the California appellate courts establishes additional or revised standards related to helmet compliance or enforcement standards.

IT IS SO ORDERED.

FN1. The San Diego County Sheriff and officials of the Huntington Beach Police Department are also defendants to this action and have entered into stipulations and settlements agreeing that they will not cite motorcyclists wearing helmets bearing a certification of compliance with federal safety standards during the pendency of this litigation. The above

defendants further agreed to be bound by any injunction ordered by the court against the CHP. [Back](#)

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FROM : CLUBHOUSE TAVERN 4001 N. LV. BLD PHONE NO. : 702 644 0192

Jan. 04 2001 04:02PM P1

2-A

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

ADMINISTRATIVE NOTICE

REFERENCE: AN-06-94
FSD

May 6, 1994

TO : ALL FIELD SERVICES DIVISION PERSONNEL
SUBJECT : MOTORCYCLE HELMET CITATIONS

Traffic citations have been issued, and occasionally motorcycles impounded, because operators and passengers of motorcycles were not wearing D.O.T. approved helmets.

NRS 486.231, which has been used to cite motorcyclists, is directed toward vendors of protective equipment for motorcyclists, not the operators themselves. Section 2 of NRS 486.231 has been interpreted by our legal advisor as: "Protective headgear or helmet is defined as a device primarily intended to protect the upper part of the wearer's head against a blow. It does not include a requirement that the helmet be D.O.T. or Nevada D.M.V. approved. For this reason, Metro's officers should not be citing individuals for non-conforming equipment."

If an operator or passenger of a motorcycle is not wearing any protective headgear, they should continue to be cited for violating NRS 486.231. However, if a "skullcap" or other non-D.O.T. or D.M.V. approved helmet is being used, they should not be cited.

MJ:kak

5.12.94
6

M.J. ZAGORSKI, A/DC.
M.J. ZAGORSKI, A/DEPUTY CHIEF
FIELD SERVICES DIVISION

RE: Need a Quote

From: **Selenne Alvarez** (Selenne@richardharrislaw.com)

Sent: Fri 10/14/11 12:36 PM

To: 'TigerLily .' (tgrlil@live.com)

1. We would charge \$50.00 to appear in court for you but it will not be reduced or dismissed. We would just appear and send you a result letter after stating how much you would owe the court.

2.If you wanted to fight the ticket we charge atleast \$400.00 and we can possibly get it dismissed.

From: TigerLily . [mailto:tgrlil@live.com]

Sent: Friday, October 14, 2011 11:35 AM

To: Selenne Alvarez

Subject: RE: Need a Quote

Las Vegas Justice

TigerLily

Lily Gonzalez, Las Vegas, NV, 702-417-6260

[TL's Blog](#) [Facebook](#) [Twitter](#) [Guerrilla Lawfare](#)

I don't ride to be safe, I ride to be free.

From: Selenne@richardharrislaw.com

To: tgrlil@live.com

Date: Fri, 14 Oct 2011 11:26:10 -0700

Subject: RE: Need a Quote

What court is your citation in?

From: TigerLily . [mailto:tgrlil@live.com]

Sent: Friday, October 14, 2011 10:08 AM

To: 6 Ticket Busters

Subject: Need a Quote

Dear Sir,

A metro cop didn't like my helmet and gave me a citation (no other charge only a charge for violating Nevada's helmet law.)

What would you charge to:

1. To the arraignment.
2. Plead NOT GUILTY at the pretrial.
3. Try the case.

4. Appeal it if convicted?

Please advise, I'm getting estimates.

Kind regards,

Lily Gonzalez

TigerLily

Lily Gonzalez, Las Vegas, NV, 702-417-6260

[TL's Blog](#) [Facebook](#) [Twitter](#) [Guerrilla Lawfare](#)

I don't ride to be safe, I ride to be free.

From: **James W. Claflin Jr. (Claflin Law)** (james@claflaw.com)

Sent: Fri 10/14/11 10:36 AM

To: TigerLily. (tgrlil@live.com)

Cc: James Claflin (james@claflaw.com)

Hello, Lily.

My fee is a \$5k flat fee to take the case from arraignment through trial. The fee is paid up front and can be paid via check or credit card.

The appeal is difficult to quote now. A fee quote for an appeal really depends on the appealable issues that actually develop at trial. Lily, I am not going to kid you. Appeals can be very, very time-consuming. We would negotiate the fee for the appeal later, and you could decide at that time if it makes sense to appeal or not, but my fee would be in the range of \$5k to \$10k.

(redacted below)

[Redacted]

[Redacted]

James W. Claflin Jr.

Attorney at Law

CLAFLIN LAW LTD

3753 Howard Hughes Parkway

Suite 200

Las Vegas, Nevada 89169

702.564.CLAF (2523)

James@ClafLaw.com

www.ClafLaw.com

RE: Can you please give me a quote?

From: Travis Barrick (travis@travisbarrick.com)

Sent: Fri 10/14/11 9:32 AM

To: TigerLily . (tgrlil@live.com)

Travis N. Barrick, Esq.
(702) 351-7422 cell

From: TigerLily . [tgrlil@live.com]

Sent: Friday, October 14, 2011 9:26 AM

To: Travis Barrick

Subject: Can you please give me a quote?

Travis I need three quotes for what an atty would charge so I can sue in small claims against my first tic that was dismissed.

What would you have charged me to represent me in this scenario:

Metro Helmet Ticket

1. Go to the arraignment - \$500
2. Go to the pretrial and declare NOT GUILTY -\$500
3. Go to trial. =\$7,500
4. Appeal if convicted. - \$7,500

Just give me a number and I'll get estimates from two other attorneys.

Thanks a mil!

TigerLily

Lily Gonzalez, Las Vegas, NV, 702-417-6260

[TL's Blog](#) [Facebook](#) [Twitter](#) [Guerrilla Lawfare](#)

I don't ride to be safe, I ride to be free.

RECEIPT

DATE 10/4/10 No. **317290**

RECEIVED FROM Ms Lillian Gonzalez, \$ 97.00
5546 Camino Al Norte Dr. #1-2 #312

La Unety-Jean DOLLARS

FOR RENT
 FOR Radio Audio & Print Log with 60 days

ACCOUNT	<u>97.00</u>	<input type="radio"/> CASH
PAYMENT	<u>97.00</u>	<input type="radio"/> MONEY ORDER
BAL. DUE	<u>0.00</u>	<input checked="" type="radio"/> CHECK # <u>210</u>
		<input type="radio"/> CREDIT CARD

FROM 100828-4862 TO _____

BY [Signature]

edams 1182