No. S244549

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IRMA RAMIREZ, Individually and on behalf of the Estate of Mark Gamar,
Plaintiff and Petitioner
v.
CITY OF GARDENA,
Defendant and Respondent.

ANSWER BRIEF ON THE MERITS

After a Decision by the Court of Appeal of the State of California, Second Appellate District, Division 1

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QUESTION FOR REVIEW

Is the immunity provided by Vehicle Code section 17004.7 available to a public agency only if all peace officers of the agency certify in writing that they have received, read, and understand the agency's vehicle pursuit policy?

PERTINENT TERMS OF VEHICLE CODE SECTION 17004.7

Pertinent portions of Vehicle Code section 17004.7 provide:

(a) The immunity provided by this section is in addition to any other immunity provided by law. The adoption of a vehicle pursuit policy by a public agency pursuant to this section is discretionary.

(b)(1) A public agency employing peace officers that adopts and promulgates a written policy on, and provides regular and periodic training on an annual basis for, vehicular pursuits complying with subdivisions (c) and (d) is immune from liability for civil damages for personal injury to or death of any person or damage to property resulting from the collision of a vehicle being operated by an actual or suspected violator of the law who is being, has been, or believes he or she is being or has been, pursued in a motor vehicle by a peace officer employed by the public entity.

(2) Promulgation of the written policy under paragraph (1) shall include, but is not limited to, a requirement that all peace officers of the public agency certify in writing that they have received, read, and understand the policy. The failure of an individual officer to sign a certification shall not be used to impose liability on an individual officer or a public entity.

SUMMARY ANSWER TO QUESTION FOR REVIEW

Defendant City of Gardena (also "the City") asserts that the answer to the question for review is no, Vehicle Code section 17004.7, subdivision (b)(2) does not require proof that *every* officer complied with the City's certification requirement for the agency to qualify for immunity. In order to

promulgate a pursuit policy, a public agency must institute "**a requirement**" that all of its officers certify, but failure by an individual officer to comply with the agency's certification requirement does not preclude agency immunity. Section 17004.7 entity immunity rests upon entity compliance with the statute, not officer compliance with the entity's mandate. It is the imposition by the agency of a certification requirement, not actual certification by every officer, that is required for agency immunity.

STATEMENT OF THE CASE

This matter comes before the Court pursuant to a summary judgment entered in favor of defendant City of Gardena on grounds that the City met the qualifications for public agency immunity. On appeal to the Second Appellate District, Division Five, judgment in favor of the City of Gardena was affirmed. Plaintiff filed a Petition for Review, which the City joined in urging this Court to grant in order to settle a conflict between the Second and Fourth Districts of the Court of Appeal regarding interpretation of the promulgation provision of Vehicle Code section 17004.7. This Court granted review on November 1, 2017.

Plaintiff Irma Ramirez, individually and on behalf of the Estate of Mark Gamar, filed a First Amended Complaint against the City of Gardena, asserting causes of action for wrongful death negligence, motor vehicle negligence, and battery, under California law. [1AA, Tab 2.] The City answered the complaint and subsequently filed a motion for summary

judgment ("MSJ") on the grounds that the PIT (precision immobilization technique) driving maneuver executed by Officer Nguyen was an objectively reasonable use of force under the circumstances and that the City was immune under Vehicle Code section 17004.7. [1AA, Tabs 3, 5-11.] The trial court found a triable issue of fact as to the reasonableness of the use of force, [1] but granted summary judgment on the ground that the City is immune under Vehicle Code section 17004.7. [5AA, Tab 30 at 1184:19-23.] Judgment was entered in favor of the City on December 8, 2016. [5AA, Tab 33.]

Plaintiff appealed from the judgment. [5AA, Tab 35.] The Court of Appeal, Second District, issued its published opinion on August 23, 2017, affirming summary judgment in favor of the City. *Ramirez v. City of Gardena* (2017) 14 Cal.App.5th 811. Plaintiff filed a Petition for Review, and this Court granted review on November 1, 2017.

FACTUAL BACKGROUND REGARDING THE PURSUIT

Undisputed facts as found by the trial court and adopted by the Court of Appeal are as follows:[2] Shortly after 11:00 p.m. on the night of February 15, 2015, several Gardena Police Department officers, including Officer Michael

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[1] City of Gardena maintains that the trial court erred in denying summary judgment as to the reasonableness of Officer Nguyen's use of force in executing a PIT maneuver because the court held that the reasonableness of use of force is a question of fact, when it is a matter of law. [5AA, Tab 30 at 1184:19-20.] However, the City did not appeal that aspect of the trial court's ruling, and it is not the subject of this appeal.

[2] The facts of the pursuit are not relevant to the review, but an abbreviated statement of facts is presented for background.

Nguyen, heard a dispatch report regarding an armed robbery. [5AA, Tab 30 at 1173; 3AA, Tab 16 at 695-696 (Defendant's Uncontroverted Material Facts ("DUMF") 1, 4, 5]; *Ramirez v. City of Gardena* (2017) 14 Cal.App.5th 811, 814. Officer Nguyen observed a pickup truck that matched the description of the suspects' vehicle and observed that the driver and passenger matched the description of the suspects. When Officer Nguyen attempted to make a traffic stop on the truck by activating his emergency lights and siren, the driver accelerated and fled. The fleeing suspects committed a number of traffic violations, including running multiple stop lights, crossing a double-yellow line to veer into oncoming traffic, speeding in a residential area, and traveling in the center median. [5AA, Tab 30 at 1173-1176; 3AA, Tab 16 at 696-698, 701-706, 709 (DUMF 5, 6, 8, 10, 16, 18-20, 23-24, 28-29)]; *Ramirez v. City of Gardena, supra,* 14 Cal.App.5th at 814-815.

Officer Nguyen and several other officers pursued the suspects. During the one to two-minute pursuit, the suspects' truck made several turns before approaching the 110/Harbor Freeway. The pursuing officers testified that they believed the truck was about to enter the freeway via the off-ramp, by driving into oncoming traffic.[3] [5AA, Tab 30 at 1175-1177; 3AA, Tab 16 at 702-705, 706, 710-712, 771 (DUMF 18, 20, 21, 25, 30, 31, 32, 33, 37)]; *Ramirez v. City of Gardena, supra,* at 841-815. In order to stop the fleeing armed robbery

[3] Plaintiff did not dispute the movements of the truck, but disputed that the truck was preparing to enter the 110/Harbor Freeway going the wrong way. [5AA, Tab 30 at 1177, fn. 13.]

suspects, Officer Nguyen performed a PIT maneuver by ramming his patrol vehicle into the left rear of the bed of the suspects' truck.[4] The driver of the truck lost control, and the truck spun and collided with a light pole. The driver exited the truck via the driver's side door and was detained. The officers removed a shotgun next to the passenger (plaintiff's decedent Mark Gamar) and removed him from the truck. He was provided medical assistance, but subsequently died of his injuries. [5AA, Tab 30 at 1177-1179; 3AA, Tab 16 at 769-771, 773-776 (DUMF 36-39, 40-42)]; *Ramirez v. City of Gardena, supra,* 14 Cal.App.5th at 815.

STATEMENT OF UNDISPUTED FACTS REGARDING ADOPTION OF, PROMULGATION OF, AND TRAINING ON THE CITY'S VEHICLE PURSUIT POLICY

THE WRITTEN VEHICLE PURSUIT POLICY

It is undisputed that at the time of the incident the Gardena Police Department had a written safe vehicle pursuit policy that was contained in the police manual.[5] The content of the policy is also undisputed. [5AA, Tab 30 at 1179, 1194; 3AA, Tab 16 at 45 (DUMF 45); 1AA, Tab 11 at 166-173 (pursuit policy)]; *Ramirez v. City of Gardena, supra,* 14 Cal.App.5th at 815.

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[4]Officer Nguyen is a Certified Legal Intervention/PIT Instructor. He received his training and certification in February 2013 at the Sacramento Driver Regional Training Authority through the Sacramento Police Department. [1AA, Tab 8 at 121 (Nguyen Dec., ¶14; 1AA, Tab 11 at 149 (training record), 217 (certificate).]

[5] Coincidentally, the City adopted a revised pursuit policy not long after plaintiff's case was filed. This case pertains to the policy in effect at the time of the incident. [3AA, Tab 15 at 685.]

Plaintiff asserted that the City's policy did not comply with section 17004.7 because it did not provide guidelines as to the conditions and circumstances officers should consider with respect to use of driving tactics (subdivision (c)(5)) and pursuit intervention tactics (subdivision (c)(6)) and gave officers unfettered discretion to attempt such tactics without objective standards. [3AA, Tab 15 at 683-685; App. Op. Brf at 40-45.] The City's pursuit policy set forth ten points addressing various driving tactics. With respect to pursuit intervention tactics, the City's policy addressed initiating and discontinuing vehicle pursuits. It identified factors to be considered in deciding whether to initiate a pursuit, directed that officers should continually question whether the seriousness of the violation reasonably warrants continuation of the pursuit, identified 13 factors officers should consider in deciding whether a pursuit should be discontinued, and identified circumstances under which a pursuit ordinarily should be terminated.[6] The policy further provided that "[a]ll forcible stop tactics . . . shall only be used as a last resort in order to stop a fleeing violator in keeping with Departmental guidelines regarding use of force and pursuit policy." [1AA, Tab 11 at 169-170.]

The trial court found that the City's policy met the content requirements of section 17004.7, including specifically subsections (c)(5) and (c)(6), and

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[6] Specifics of the City's vehicle pursuit policy are discussed in more detail below.

that it provided "objective standards by which to evaluate the pursuit and whether it should be initiated and what tactics to employ." [5AA, Tab 30 at 1196-1200 (quote at 1199:6-9).] The Court of Appeal held that the City's policy " 'appropriately "control[led] and channel[ed]" the pursuing officer's discretion' in deciding whether to use forcible tactics to stop a pursuit and apprehend a suspect" and concluded, "the City's pursuit policy in place at the time of the incident met the standards of section 17004.7, subdivision (c)." *Ramirez v. City of Gardena, supra,* 14 Cal.App.5th at 829.

TRAINING

It is undisputed that the Gardena Police Department provided training on its vehicle pursuit policy for all of its active duty police officers on an annual basis, or more frequently, and all officers were required to attend. At training, the officers are given a copy of the policy, they take turns reading the policy out loud, and they discuss real-world application of the policy. The officers also receive training on how to perform pursuit-ending procedures, including PIT maneuvers. [5AA, Tab 30 at 1190-1191, 1193; 3AA, Tab 16 at 778-780 (DUFM 45); 2AA, Tab 13 at 340:3-15, 381:17-22, 382:20-383:3 (Osorio Depo); 3AA, Tab 14 at 641:9-25, 642:14-19; 643:1-5 (Ross Depo).] The City demonstrated that it provided training on its vehicle pursuit policy in each of the six years prior to the February 2015 incident and that each of the officers involved in the pursuit received training within one year prior to the incident. [3AA, Tab 16 at 778-780 (DUMF 45); 1AA, Tab 11 at 142-143

(Saffell Dec., ¶¶11, 16) 146-149 (Nguyen's training record); 151-153 (in-house training record); 154-157 (course attendance roster); 2AA, Tab 13 at 356:2-19, 381:20-22, 383:1-3 (Osorio Depo); 5AA, Tab 30 at 1191:15-22.]

The trial court found that "[a]ll active duty police officers received the training on an annual basis or more frequently and were required to certify that he or she received, read, and understood the pursuit policy and training." [5AA, Tab 30 at 1189, 1193.] The adequacy of the City's training on its vehicle pursuit policy was not challenged by plaintiff in opposition to the MSJ or on appeal.

THE CERTIFICATION REQUIREMENT

The Gardena Police Department required all its active-duty officers to certify in writing that they received, read, and understand the department's vehicle pursuit policy, either by completing a POST[7] training attestation form (used in 2009 and 2010) or by signing an attendance roster at the end of training (after 2010). [3AA, Tab 16 at 778-780 (DUMF 45); 2AA, Tab 13 at 340:9-341:5; 344:7-19; 345:9-346:16 (Osorio Depo); 3AA, Tab 14 at 642:5-11 (Ross Depo); 1AA, Tab 11 at 143 (Saffell Dec., ¶11), 146-150, 151-153, 154-157, 216-283.] The City produced evidence that all its active-duty officers at the time of the incident, had certified in writing that they received, reviewed, and understand the City's vehicle pursuit policy. The City submitted a training

[7] The Department of Justice's "Commission on Peace Officer Standards and Training" is referred to as "POST." Pen. Code §13500(a).

log showing that 81 of the City's 92 officers (including Officer Nguyen) had completed the annual training on the City's pursuit policy within the year prior to the incident [1AA, Tab 11 at 155-157] and declaration testimony that all officers attending training are required sign an attendance roster indicating that they have received, read, and understand the policy [1AA, Tab 11 at 143:5-9; 145:2-5 (Saffell Dec.); 2AA, Tab 13 at 340:3-341: 5 (Osorio Depo); 3AA, Tab 14 at 642:5-11 (Ross Depo).]. The City also submitted POST attestation forms completed by 64 officers in 2009 and 2010 attesting that they received, read, and understand the City's pursuit policy. [1AA, Tab 11 at 219-283.] In addition, the City submitted testimony by its Custodian of Records that all officers employed by the City at the time of the incident completed such forms, but some of the forms may have been lost during the department's move to a new station. [1AA, Tab 11 at 145:1-7.]

In opposition to the MSJ and on appeal plaintiff argued that promulgation under Vehicle Code section 17004.7 requires *every* officer to complete a written certification. The plaintiff asserted that the City did not meet the requirements for immunity because it did not prove that *every* officer signed a written certification inasmuch as the City no longer had some of the certification documents, which had been lost, and because information from the original training rosters was entered into the City's electronic records and the original rosters were not kept.

Based on the training roster, the POST attestations, the deposition testimony of Lt. Osorio that all officers are required to attend training and sign the attendance roster, and the declaration of Lt. Saffell, the Custodian of Records, that all active duty police officers received training on an annual basis or more frequently and were required to certify that they received, read, and understood the pursuit policy and training, the trial court found that the City properly promulgated its pursuit policy in compliance with Vehicle Code section 17004.7 subd. (b). [5AA, Tab 30 at 1189:24-1191:14; 1193:2-17.]

The Court of Appeal rejected plaintiff's interpretation that promulgation requires certification by every officer, declaring, "We . . . agree with the City that '[p]romulgation in section 17004.7, subdivision (b)(2) means that, to obtain immunity, a public agency must *require* its peace officers to certify in writing " 'that they have received, read, and understand'" the agency's pursuit policy. However, if the agency actually imposes such a requirement, complete compliance with the requirement is not a prerequisite for immunity to apply." *Ramirez v. City of Gardena, supra,* 14 Cal.App.5th at 825 (emphasis in *Ramirez*). The Court declared, "There is no dispute here that the City actually had a requirement that its officers execute the requisite written certification," citing the testimony of Lt. Saffell and noting that in opposing summary judgment plaintiff did not controvert the existence of the City's certification requirement, but claimed only that the City failed to produce proof of certification by "each and every officer." *Id.* The Court of Appeal found that

the training roster and the POST attestations were sufficient to establish that the City imposed a requirement that all its officers certify in writing that they received, read, and understood the City's pursuit policy (even though the log and attestations, alone, did not establish certification by each and every officer), and that it was therefore not necessary to determine the sufficiency of Lt. Saffell's declaration on information and belief that that all of the officers who were employed at the time of the incident completed written certifications stating that they had received, reviewed, and understood the City's pursuit policy. *Id.* at 819.

LEGAL ARGUMENT

I. THE STANDARD OF REVIEW

The California Supreme Court is the final arbiter of the meaning of state statutes. *Beal v. Missouri Pacific R. Co.* (1941) 312 U.S. 45, 49-50; *State Comp. Ins. Fund v. Superior Court* (2001) 24 Cal.4th 930, 940. The meaning of a statutory provision is a pure question of law. *Regents of University of California v. Superior Court* (1999) 20 Cal.4th 509, 531; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 271. In determining the meaning of a state statute, the California Supreme Court decides a question of law and exercises de novo review. *Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1247; *Bruns v. E-Commerce Exchange, Inc.* (2011) 51 Cal.4th 717, 724.

A motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the

moving party is entitled to a judgment as a matter of law." Code Civ. Proc., §437c(c). A defendant "has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action ... cannot be established ...." *Id.*, subd. (p)(2). Upon such a showing, "the burden shifts to the plaintiff ... to show that a triable issue of one or more material facts exists as to that cause of action ...." (*Ibid.*)

"On review of an order granting or denying summary judgment, [the Supreme Court] examine[s] the facts presented to the trial court and determine[s] their effect as a matter of law. *Parsons v. Crown Disposal Co.* (1997) 15 Cal.4th 456, 464. Where the pertinent facts are undisputed and the issue is one of statutory interpretation, "'the question is one of law and [the Court] engage[s] in a de novo review of the trial court's determination.'" *Sacks v. City of Oakland* (2010) 190 Cal.App.4th 1070, 1082. Section 17004.7 additionally provides that determination of whether a law enforcement agency's vehicle pursuit policy complies with statutory requirements as to its content and whether the agency has complied with training requirements are questions of law for the court. Veh. Code §17004.7(f). The Supreme Court decides on the undisputed facts presented to the trial court whether the City of Gardena is immune from liability for plaintiff's injuries under Vehicle Code section 17004.7 as a matter of law, applying de novo review.

II. RULES OF STATUTORY INTERPRETATION

The rules of statutory interpretation are well-established. The fundamental task of the court in statutory interpretation is to ascertain and effectuate the law's intended purpose. *Weatherford v. City of San Rafael, supra,* 2 Cal.5th at 1246; *Apple Inc. v. Superior Court* (2013) 56 Cal.4th 128, 135. If the statutory language permits more than one reasonable interpretation, courts may consider extrinsic aids, including the purpose of the statute, the evils to be remedied, the legislative history, public policy, and the statutory scheme encompassing the statute. *People v. Yartz* (2005) 37 Cal.4th 529, 537-538.

The Court begins by "examin[ing] the ordinary meaning of the statutory language, the text of related provisions, and the overarching structure of the statutory scheme." *Weatherford v. City of San Rafael, supra,* 2 Cal.5th at 1246-1247, citing e.g., *Larkin v. Workers' Comp. Appeals Bd.* (2015) 62 Cal.4th 152, 157–158; *Poole v. Orange County Fire Authority* (2015) 61 Cal.4th 1378, 1391 (conc. opn. of Cuéllar, J.). A court looks first to the words of the statute themselves, giving the language its usual, ordinary import. *Day v. City of Fontana* (2001) 25 Cal.4th 268, 272. Courts must "accord[] significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose." *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379,1387. The words of the statute must be construed in context, and statutes or statutory sections relating to the same subject must

be harmonized, both internally and with each other, to the extent possible. *Id.; Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230. Interpretive constructions that render some words surplusage, defy common sense, or lead to mischief or absurdity, are to be avoided. *Day v. City of Fontana, supra,* 25 Cal.4th at 272; *Fields v. Eu* (1976) 18 Cal.3d 322, 328.

Where uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation. *Dyna-Med, Inc. v. Fair Employment & Housing Com., supra,* 43 Cal.3d at 1387; *Party City Corp. v. Superior Court* (2008) 169 Cal.App.4th 497, 508. If the clear meaning of the statutory language is not evident after attempting to ascertain its ordinary meaning or its meaning as derived from legislative intent, the court will "apply reason, practicality, and common sense to the language at hand. If possible, the words should be interpreted to make them workable and reasonable [citations], ... practical [citations], in accord with common sense and justice, and to avoid an absurd result [citations]." *Sacks v. City of Oakland, supra,* 190 Cal.App.4th at 1082. Construction that leads to unreasonable or impractical results or anomalous or absurd consequences is to be avoided. *Fields v. Eu, supra,* 18 Cal.3d at 328; *Horwich v. Superior Court* (1999) 21 Cal.4th 272, 280. If a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed. *Metropolitan Water Dist. v. Adams* (1948) 32 Cal.2d 620, 630-631.

III. VEHICLE CODE SECTION 17004.7, PROPERLY INTERPRETED, PROVIDES THAT TO QUALIFY FOR ENTITY IMMUNITY, A PUBLIC AGENCY MUST INSTITUTE *A REQUIREMENT THAT* ALL ITS OFFICERS CERTIFY THAT THEY HAVE RECEIVED, READ, AND UNDERSTAND ITS VEHICLE PURSUIT POLICY; FAILURE OF AN INDIVIDUAL OFFICER TO COMPLY WITH THE AGENCY'S CERTIFICATION REQUIREMENT DOES NOT PRECLUDE IMMUNITY.

The promulgation language under consideration is found in the 2005 amendment to Vehicle Code section 17004.7.[8] That amendment added promulgation and training as conditions for public agency immunity from liability for vehicle pursuits. To qualify for agency immunity, public agencies must now "adopt[] **and promulgate**[]" a written vehicle pursuit policy and "provide regular and periodic training" on the policy on an annual basis. Veh. Code §17004.7(b)(1) (emphasis added). The new promulgation requirement is defined in the statute as follows:

> Promulgation of the written policy under paragraph (1) shall include, but is not limited to, **a requirement that** all peace officers of the public agency certify in writing that they have received , read, and understand the policy. The failure of an individual officer to sign a certification shall not be used to imposed liability on an individual officer or a public entity. Veh. Code §17004.7(b)(2) (emphasis added).

City of Gardena asserts that Vehicle Code section 17004.7, properly interpreted, provides that in order to qualify for entity immunity, a public agency must institute *a requirement that* all its officers certify; but failure of a

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[8] The 2005 amendment became effective on January 1, 2007.

single individual officer to comply with the agency's certification requirement does not preclude immunity for reasons that are discussed below.

In contrast, in *Morgan v. Beaumont Police Dept.* (2016) 246 Cal.App.4th 144, the Fourth Appellate District concluded "that the promulgation language of section 17004.7, subdivision (b)(2) is unambiguous in its requirement that '*all* peace officers of the public agency certify in writing that they have received, read, and understand' the agency's vehicle pursuit policy." *Id.* at 154 (emphasis in *Morgan* and deleted). Under *Morgan's* interpretation of the statute, certification by the "vast majority" of the agency's officers is insufficient to meet the statute's promulgation requirement; **every** officer must certify. *Id.* at 162. In support of its interpretation the *Morgan* court cites the legislative history of the amendment of section 17004.7 adding promulgation as a requirement for immunity and the POST Commission website. The court's statutory construction analysis is confined to the significance of the last sentence in subdivision (b)(2).

In the present case the Second Appellate District disagreed with the *Morgan* court's conclusion that the promulgation provision is unambiguous, noting that the *Morgan* court did not consider any other possible constructions, including the alternative construction suggested by the City in this case, and concluded that the City's construction "is not only plausible, but is more consistent with the language of the subdivision." *Ramirez v. City of Gardena, supra,* 14 Cal.App.5th at 821-822. The *Ramirez* court held that

"promulgation" in section 17004.7, subdivision (b)(2) "means that, to obtain immunity, "a public agency must *require* its peace officers to certify in writing that they have received, read and understand the agency's pursuit policy. However, if the agency actually institutes such a requirement, complete compliance with the requirement [by every individual officer] is not a prerequisite for immunity to apply." *Id.* at 825 (emphasis in original) (bracketed material added). The *Ramirez* court based its interpretation on the language of the statute, including the last sentence of subdivision (b)(2), which states that "the failure of an individual officer to sign a certification shall not be used to impose liability on an individual officer or a public entity," and observed that had the Legislature intended to make public agency immunity dependent upon certification by 100 percent of an agency's officers, "it could have said so much more directly." *Id.* at 818, 822.

Ramirez found no support for the *Morgan* court's interpretation in the legislative history of the amendment to section 17004.7, noting that although the legislative history establishes that promulgation is *important*, it does not shed light on precisely what promulgation must involve. The court noted that the City's interpretation is consistent with the statute's legislative history, which demonstrates an intent not to abandon a balanced approach that does not move too far in the direct of protecting public safety at the expense of immunity that an agency can view as predictable and certain. The court declared that "Conditioning an agency's entitlement to immunity on the

behavior of particular officers is inconsistent with the approach that the Legislature adopted in amending section 17004.7 to ensure that *agencies* took appropriate steps to implement their pursuit policies." *Id.* at 824 (emphasis in original).

A. THE CITY'S AND THE SECOND DISTRICT'S INTERPRETATION GIVES ORDINARY MEANING TO THE TERM "PROMULGATE," WHICH IS AN ACTION TO BE PERFORMED BY AN AGENCY, NOT BY INDIVIDUAL OFFICERS.

Since the 2005 amendment of section 17004.7, agency immunity has been conditioned on the agency's adoption **and promulgation** of a vehicle pursuit policy. The first indicator of the Legislature's intent is the ordinary meaning of the words of the statute. According to Black's Law Dictionary, to "promulgate" means "to publish, to announce officially, to make public as important or obligatory." Black's Law Dict. (Revised 4th ed. 1968), p. 1380. According to Merriam-Webster's on-line dictionary, to "promulgate" means "to make (something, such as a doctrine) known by open declaration: proclaim." A second meaning is "to make known or public the terms of (a proposed law)" or "to put (a law) into action or force." Merriam-Webster's Dict. <http://www.merriam-webster.com/dictionary/promulgate> [as of January 10, 2017]. Thus, promulgation of a policy has to do with official action proclaiming, circulating, and putting the policy into action. Promulgation is an official action to be accomplished by the public agency; it is not action to be performed by individual officers.

The legal and ordinary definitions of "promulgate" dovetail with the definition of promulgation set forth in subdivision (b)(2) of section 17004.7 which states that promulgation "shall include . . . ***a requirement that*** all peace officers of the public agency certify in writing that they have received, read, and understand the policy." When an agency institutes ***a requirement that*** all its officers certify in writing that they have received, read, and understand the agency's vehicle pursuit policy, the agency has taken official action announcing, circulating, and putting the policy into action; it has promulgated the policy. Promulgation is performed by the agency. Compliance with the agency's certification requirement by every individual officer is not required for "promulgation" of the policy.

B. THE CITY'S AND THE SECOND DISTRICT'S INTERPRETATION IS CONSISTENT WITH THE LEGISLATURE'S DECISION TO REST AGENCY IMMUNITY ON AGENCY CONDUCT, NOT ON OFFICER CONDUCT, AND EFFECTUATES THE PURPOSE OF THE STATUTE TO INCENTIVIZE PUBLIC AGENCIES TO ADOPT AND PROMULGATE SAFE VEHICLE PURSUIT POLICIES.

Section 17004.7 must be interpreted to condition immunity on an agency-imposed certification requirement, rather than full compliance with the certification requirement by every individual officer, both because the Legislature elected to condition agency immunity on agency conduct, not officer conduct, and because conditioning agency immunity on agency

conduct, rather than on officer conduct, best effectuates the purpose of the immunity statute to incentivize public agencies to adopt and promulgate vehicle pursuit policies and thereby enhance public safety.

The Legislature created separate schemes for public agency immunity and for individual officer immunity from liability arising out of vehicle pursuits. *Agency* immunity is governed by Vehicle Code section 17004.7[9] and depends upon and is intended to incentivize agency conduct, while individual

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[9] Vehicle Code section 17004.7 was enacted in 1987 to limit the liability of public agencies for vehicle pursuits by law enforcement agencies, whose individual officers were immune under Vehicle Code section 17004, by affording immunity to public agencies that adopt vehicle pursuit policies that meet certain requirements. *Weaver v. State of California* (1998) 63 Cal.App.4th 188, 200; *Ramirez, supra,* 14 Cal.App.5th at 818.

With respect to Senate Bill 719, the Senate Committee on Public Safety stated, "The purpose of this bill is to require law enforcement agencies to promulgate and train on their pursuit policy *in order to get immunity*." Sen. Com. on Public Safety, Analysis of Sen. Bill 719 (2005-2006 Reg. Sess.) as amended April 21, 2005, p. 2 (emphasis added). (A request for judicial notice of legislative history materials in unnecessary; citation to published materials, including legislative bills and committee and floor analyses, is sufficient. *Quelimane Company Inc. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 46, fn. 9 (request for judicial notice of published materials unnecessary; citation to materials sufficient); *Sharon S. v. Superior Court* (2003) 31 Cal.4th 417, 440, fn. 18 (request for judicial notice of legislative history materials generally available from published sources denied as unnecessary, citing *Quelimane*); *People v. Rodriguez* (2012) 55 Cal.4th 1125, 1129, fn. 4 (request for judicial notice of Legislative Counsel's summary digest of Senate and Assembly bills not necessary, request treated as citation to published materials, citing *Quelimane*); *Wittenburg v. Beachwalk Homeowners Assn.* (2013) 217 Cal.App.4th 654, 665 (request for judicial notice of published legislative history, such as Senate analyses, unnecessary, citing Quelimane); see also, *In re Jorge M* (2000) 23 Cal.4th 866, 886, fn. 10 (Evidence Code does not limit courts' consultation of "whatever materials are appropriate in construing statutes . . . ." (Cal. Law Revision Com. com., 29B pt. 1 West's Ann. Evid. Code (1995 ed.) foll. §450, p. 420.))

officer immunity is governed by Vehicle Code section 17004 and depends upon the duty being performed by the individual officer (an officer is immune when responding to an emergency call or in immediate pursuit of an actual or suspected violator of the law).

> [T]he statute's primary purpose is to confer immunity on governmental entities which before the passage of this bill, enjoyed only limited immunity while its employees, the police officers, were entirely immune by statute. (Veh. Code, § 17004; Assem. File Analysis, *supra*, at p. 2.) In other words, the **focus** of Vehicle Code section 17004.7 **is on the governmental entity, not the actions of the police officers**.
> *Kishida v. State of California* (1991) 229 Cal.App.3d 329, 336 (emphasis added).

As initially proposed, the bill to amend section 17004.7, Senate Bill 719, made adoption, promulgation, and training pursuant to a vehicle pursuit policy by law enforcement agencies mandatory. However, the Legislature ultimately elected to make adoption of a vehicle pursuit policy *discretionary* and provided agency immunity as an *incentive* to agencies to adopt and promulgate a vehicle pursuit policy.[10] The agency immunity statute, on the other hand, provides no incentive to officers, whose immunity depends upon matters unrelated to certification. Section 17004.7 "is intended to **encourage**

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[10] Senate Bill 719, as amended in the Senate on April 21, 2005 "would make adoption, promulgation, and regular and periodic training pursuant to a vehicle pursuit policy mandatory." Amendment to the bill in the Assembly on September 2, 2005, revised the bill to state, as enacted, "The adoption of a policy by a public agency pursuant to this section is discretionary." Sen. Bill 719 (2005-2006 Gen. Sess.) as amended April 21, 2005; Sen. Bill 719 (2005-2006 Gen. Sess.) as amended in the Assem. September 2, 2005.

agencies to adopt express guidelines, while leaving to these agencies the fundamental law enforcement decisions about when to undertake pursuit, free from threats of liability." *Id.* at 335 (emphasis added).

In *Nguyen v. City of Westminster* (2002) 103 Cal.App.4th 1161, which was decided under the 1987 version of section 17004.7, the court affirmed summary judgment in favor of the City of Westminster because there was then "no requirement the public entity implement the policy through training or other means." *Id.* at 1168. The *Nguyen* court protested that it could not consider whether the pursuit policy had been implemented, whether the officers' decision to continue the pursuit was unreasonable or reckless, or whether the officers followed the city's policy because "[t]he extent to which the policy was implemented in general and was followed in the particular pursuit was irrelevant" under that statute and the defendant was not required to prove that the officers participating in the pursuit followed the policy. *Id.* at 1167-1169. The *Nguyen* court urged the Legislature to revisit the "balance between public entity immunity and public safety." *Id.* at 1169.

In response to the *Nguyen* decision, the Legislature amended Vehicle Code section 17004.7 to add promulgation and training requirements: "A public agency employing peace officers that adopts and promulgates a written policy on, and provides regular and periodic training on an annual basis for, vehicular pursuits . . . is immune . . . " Veh. Code §17004.7(b)(1). Nominal adoption of a policy is no longer sufficient to qualify for agency immunity.

However, the Legislature did not amend section 17004.7 in the manner urged by the *Nguyen* court, but reached a compromise middle-ground intended to balance the need for law enforcement action and public safety. The Legislature appears to have rejected the statement by the *Nguyen* court that the balance to be considered is the balance "between public entity immunity and public safety." The balance proposed by the *Nguyen* court incorrectly suggested that less immunity or stricter requirements for immunity means more safety and more immunity or less strict requirements for immunity means less safety. However, immunity is available only to agencies that adopt, promulgate, and provide training on pursuit policies, thereby increasing public safety. In its analysis of the bill, the Assembly Committee on Public Safety noted that the bill addresses a different balance. The bill "considers the fine balance between the immediate need to apprehend a fleeing suspect and the publics' [sic] safety on our roads and highways." Assem. Com. on Public Safety, Analysis of Sen. Bill 719 (2005-2006 Reg. Sess.) as amended May 19, 2005, p. 6.[11] The statute serves as a declaration by the Legislature that an immunity provision that effectively incentivizes public agencies to achieve reasonably attainable immunity by adopting and promulgating and by training on vehicle pursuit policy **enhances** public safety on California roads and highways.

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[11] See the latter portion of footnote 8 regarding citation to legislative history.

The history of the amendment of section 17004.7, recited in the *Morgan* case and by plaintiff, does no more than establish that the Legislature intended to require both adoption and promulgation of a vehicle pursuit policy as conditions of immunity. Contrary to the *Morgan* court's assertion, its interpretation of the promulgation provision as being "unambiguous in its requirement that *'all* peace officers of the public agency certify in writing that they have received, read, and understand' the agency's vehicle pursuit policy" is not supported by the legislative history of the amendment to section 17004.7. *See, Morgan, supra,* 246 Cal.App.4th at 154, 155; [Op. Brf on the Merits, pp. 22-27.] The recited legislative history merely reflects that the Legislature considered requiring promulgation important. However, it has no bearing on the substance of the certification requirement and does not support an interpretation that promulgation requires certification by every officer. As the *Ramirez* court observed, "the fact that promulgation is **important** does not shed light on precisely what it must involve." *Ramirez, supra,* 14 Cal.App.5th at 823 (emphasis in original).

The *Ramirez* court considered the hypothetical case of a public agency that diligently and effectively promulgates its pursuit policy through dissemination of the policy, regular training, and a requirement for written certification by its officers, including consequences for those who fail to certify, observing that such conscientious conduct seemingly recognizes the importance of implementing the pursuit policy the agency has adopted.

Nevertheless, the court observed, under the plaintiff's interpretation, such an agency would not be entitled to immunity if a particular officer fails to meet the requirements of his or her job by neglecting or refusing to complete a written certification. The court concluded, "We should not assume that the Legislature intended such extreme and arbitrary consequences simply from the fact that it regarded the promulgation requirement as an important addition to section 17004.7." *Ramirez, supra*, 14 Cal.App.5th at 823.

Despite the importance of promulgation, the Legislature elected **not** adopt most of the restrictions urged by the *Nguyen* court, and opted instead for a "balanced," "more moderate" approach to agency immunity. The Legislature rejected laws that would have conditioned agency immunity on officer conduct as too extreme. As the Senate Judiciary Committee stated in discussing the proposed amendment:

> Previous bills that followed the *Nguyen* decision, SB219 (Romero, 2003) and SB 1866 (Aanestad, 2004),sought to rectify this clear imbalance by establishing that public entities are not immune from liability relating to vehicle pursuits unless the officers involved were obeying the entities' pursuit policy at the time of the injury [and in the case of SB 1866, the officers did not act in bad faith, and were not grossly negligent].[12] Law enforcement representatives objected to the proposed solutions in those bills as **too extreme**. [¶] This bill is proposed as **a more moderate approach to balance the various interests**, requiring entities to implement pursuit policies and mandate

[12] Another rejected bill, SB 718 (Aanestad & Romero, 2005), would have barred law enforcement from initiating a pursuit without reasonable suspicion that the suspect had committed a violent felony. Sen. Com. on Judiciary, Analysis of Sen. Bill 719 (2005-2006 Reg. Sess.) as amended May 5, 2005, p. 6.

training of their officers . . . . .
Sen. Com. on Judiciary, Analysis of Sen. Bill 719 (2005-2006 Reg. Sess.) as amended May 5, 2005, p. 2 (emphasis added).

When it amended section 17004.7 to require promulgation and training, the Legislature did not change the statute's focus on *agency* conduct. The amended section 17004.7, like the original section 17004.7, provides agency immunity as an inducement for desired agency conduct, irrespective of officer conduct. The Legislature declared that the bill to amend section 17004.7 "would enact the measures suggested by law enforcement groups, attaching immunity when public entities adopt and promulgate appropriate polices and institute sufficient training requirements, *regardless of officers' behavior in a particular pursuit.*" Sen. Com. on Judiciary, Analysis of Sen. Bill No. 710 (2005-2006 Reg. Sess.) May 10, 2005, p. 6 (emphasis added).

The amended statute requires that the agency "provide" training, not that each officer undergo training. For the same reason, the statute requires that the agency institute a requirement that all its officers sign a certification, not that each officer actually certify. Any other interpretation would be incompatible with the Legislature's scheme to encourage *agencies* to adopt and promulgate pursuit policies.

C. THE CITY'S AND THE SECOND DISTRICT'S INTERPRETATION GIVES MEANING TO AND HARMONIZES ALL PARTS OF THE STATUTE.

Section 17004.7 must be interpreted to mandate an agency-imposed certification requirement, rather than compliance with the agency's

certification requirement by every individual officer, because that is the only interpretation that gives meaning to all parts of the statute and harmonizes the statute internally. As discussed below, interpreting the statute to require written certification by each and every officer would effectively write the words "a requirement" out of the statute, would conflict with the provision that requires training on only an annual basis, and would render the provision that failure of an individual officer to sign a certification shall not be used to impose liability on an individual officer or a public entity mere surplusage.

An interpretation requiring certification by every officer reads the term "a requirement" out of the statute and deprives those words of any significance. Section 17004.7 provides, "Promulgation . . . shall include *a requirement that* all peace officers of the public agency certify in writing that they have received, read and understand the policy." Under plaintiff's interpretation, it could just as well read, "Promulgation . . . shall include . . . that all peace officers of the public agency certify in writing that they have received, read, and understand the policy." Plaintiff's description of promulgation, which makes no reference to "a requirement," proves the point. Plaintiff asserts, "[A]n agency's vehicle pursuit policy is not 'promulgated' within the meaning of subdivision (b)(2) of section 17004.7 unless, at a minimum, 'all' of its peace officers 'certify in writing that they have received, read and understand the policy . . . ." [Op. Brf on the Merits, p. 27 (emphasis omitted).]

The notion that the purpose of the words "a requirement" in subdivision (b)(2) is to render certification a mandatory condition of immunity is also unpersuasive because the mandatory nature of certification is established by the provision that promulgation "shall" include a requirement that all peace officers certify that they have received, read, and understand the agency's pursuit policy. Veh. Code §17004.7(b)(2). The words "a requirement" in subdivision (b)(2) serve a different function. They establish that in order to satisfy the promulgation condition, an agency must institute "a requirement that all peace officers of the public agency certify." The "requirement" called for is a **mandate by the public agency** that all of its officers certify. It is not actual certification by every officer. When an agency institutes a requirement that all its officers certify that they have received, read, and understand the policy, the agency has met the promulgation condition for agency immunity.

Plaintiff contends that the phrase "all peace officers" instead of "some peace officers" in the sentence "Promulgation . . . shall include . . . a requirement that all peace officers of the public agency certify in writing . . . . " was used by the Legislature to show that agencies must provide certification documents signed by every officer to avail themselves of immunity under section 17004.7. [Op. Brf on the Merits, p. 19.] However, the phrase "all peace officers" merely describes the scope of the mandate the agency must impose. The agency must impose a requirement that all of its officers certify.

The Legislature could have provided that agency immunity is dependent upon certification by every officer, had it wanted to do so. *See, Azure Limited v. I-Flow Corp.* (2009) 46 Cal.4th 1323, 1335 (the Legislature "knows how to condition immunity on compliance with the UPL"); *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 735 (the Legislature knows how to create an exemption when it wishes to do so). As the *Ramirez* court reasoned, if the Legislature had intended to make agency immunity dependent upon compliance by 100 percent of an agency's officers, "it could have said so much more directly. Rather than stating that promulgation 'shall include . . . a requirement,' it could simply have said that promulgation 'means' written certification by all officers," using the same construction it used in defining the training requirement. *Ramirez, supra,* 14 Cal.App.5th at 822-823; see also, Veh. Code §17004.7(d). The fact that the Legislature did *not* condition agency immunity on the actual certification of each and every officer demonstrates that such a precondition to agency immunity was not the Legislature's intent.

Plaintiff's interpretation that the statute requires that every officer must certify that he or she received, read, and understands the pursuit policy by the date of a pursuit incident is inconsistent with the statutory provision that the agency "provide[] regular and periodic training **on an annual basis.**" Veh. Code §17004.7(b)(1) (emphasis added). Training would have to be conducted far more frequently than annually to ensure that all officers, including new

hires and absentee officers, receive training permitting them to make the requisite certification by the date of any given pursuit incident.

In addition, the City's interpretation gives meaning to the last sentence of subdivision (b)(2), which states, "The failure of an individual officer to sign a certification shall not be used to impose liability on an individual officer or a public entity." Plaintiff and the *Morgan* court offer no explanation for what the sentence means. They merely assert that, despite its location within the same subsection and immediately following the definition of promulgation for purposes of immunity, it does not pertain to immunity. They seem to suggest that the sentence is merely a statement that failure of an individual officer to certify does not create a cause of action against the officer or the entity. [Op. Brf on the Merits, at 19; *Morgan, supra,* 246 Cal.App.4th at 160.]

However, under such an interpretation the sentence would serve no purpose. A statutory provision that failure of an officer to certify does not create a cause of action against the agency or the officer would be mere surplusage inasmuch as one cannot imagine under what circumstances a plaintiff could ever claim injury as a result of the failure of an individual officer to sign a certification. This is particularly so in light of the fact that agency adoption of a pursuit policy in the first place is discretionary.

Precluding per se negligence for violation of an agency's pursuit policy in section 17004.7 would be superfluous for the additional reason that negligence per se for violation of a pursuit policy has already been foreclosed.

When section 17004.7 was originally enacted in 1987, there was a concern on the part of agencies that a policy manual might be considered a regulation and the agency might therefore be subject to liability when an officer failed to comply with the policy under Evidence Code section 669, which recognizes a presumption of negligence upon violation of a "regulation of a public agency." *See, Clemente v. State of California* (1985) 40 Cal.3d 202, 214-216. The Legislature foreclosed this issue when it passed Senate Bill 1598 (enacted in 1987 as Evidence Code section 669.1) as part of the public entity tort liability reform package of bills that included Assembly Bill 1912 (enacted in 1987 as Vehicle Code section 17004.7). Sen. Com. on Judiciary, Analysis of Assembly Bill 1912 (Reg. Sess. 1987-1988), as amended August 20, 1987, p. 13b.

Evidence Code section 669.1 provides that a public agency policy, manual, or guideline is not a statute, ordinance, or regulation of a public entity for purposes of the presumption of negligence created under Evidence Code section 669. It states:

> A rule, policy, manual, or guideline of state or local government setting forth standards of conduct or guidelines for its employees in the conduct of their public employment shall not be considered a statute, ordinance, or regulation of that public entity within the meaning of Section 669, unless the rule, manual, policy, or guideline has been formally adopted as a statute, as an ordinance of a local governmental entity in this state empowered to adopt ordinances, or as a regulation by an agency of the state . . . or by an agency of the United States government . . . .

Accordingly, the last sentence of subdivision (b)(2) of section 17004.7 is superfluous for the purpose of stating that violation of an agency's pursuit policy does not create a cause of action or constitute negligence per se.

One other meaning that might be attached to the last sentence of subdivision (b)(2) is that it is intended to ensure that section 17004.7 will not be deemed to provide a statutory basis for public entity liability as a statute declaring a public governmental liable. Government Code section 815 provides that government entities may be held liable only if a statute "declar[es] them to be liable." Leg. Comm. comments to Gov. Code §815. However, the purpose of Vehicle Code section 17004.7 is just the opposite of declaring an entity liable; it is to provide entity immunity. Furthermore, complying with the conditions for immunity is *discretionary*. Inasmuch as section 17004.7 cannot be deemed to declare a governmental entity liable, there is no purpose to a sentence within section 17004.7 declaring that failure of an individual officer to sign a certification shall not be used to impose liability on an individual officer or a public entity to preclude the statute being interpreted as a basis for liability as is required under Government Code section 815. To have meaning, the last sentence of subdivision (b)(2) must be deemed to provide that the failure of an individual officer to sign a certification shall not be used to preclude immunity, which in this context is simply the flip-side of "impose liability."

The *Morgan* court takes the position that the last sentence of subdivision (b)(2) does not provide support for the assertion that promulgation does not require certification by every individual officer. The *Morgan* court declared that that assertion confuses liability and immunity. The court stated, "Although subdivision (b)(2) of section 17004.7 expressly provides *liability* cannot be imposed on an officer or public agency merely because a peace officer failed to sign a certification as required by that subdivision, that does not mean that an agency, ipso facto, is nonetheless entitled to *immunity* as provided under section 17004.7, even if the agency's vehicle pursuit policy was not properly promulgated as required by the plain language of the statute." *Morgan, supra,* 246 Cal.App.4th at 160 (emphasis in original). The court's argument assumes the point in question – that promulgation requires certification by every officer – and then declares that the last sentence does not *reverse* its assumed interpretation.

In response to the *Morgan* court's argument distinguishing between imposing liability and precluding immunity, the *Ramirez* court observed, "The failure of an individual officer to execute a written certification does in fact operate to 'impose liability' on a public agency when it makes immunity unavailable for a claim on which the agency would otherwise be liable. Thus the *Morgan* court's interpretation fails to give effect to the plain language of the sentence." *Ramirez, supra,* 14 Cal.App.5th at 822. The *Ramirez* court noted that the *Morgan* court's distinction between imposing liability and

removing immunity is even more strained when applied to claims against individual officers because Vehicle Code section 17004 provides broad immunity to public employees pursuing suspects in the line of duty. "Thus, there is no obvious way in which a police officer's failure to certify his or her understanding of a pursuit policy could be used to 'impose' individual liability other than by somehow revoking the broad immunity that section 17004 would otherwise provide." *Id.*

The *Morgan* court also argued that the City's and the Second District's interpretation that the statute does not require certification by every officer would "eviscerate the certification requirement . . . and undermine the important public policy of promulgation of an agency's vehicle pursuit policy." *Morgan, supra,* 246 Cal.App.4th at 160. Again, however, the court's argument presupposes, rather than demonstrates, that the statute requires certification by every officer.

The certification provision is not eviscerated by an interpretation that the statue requires the entity to require that all of its officers certify, but does not disqualify the entity from immunity for failure of an individual officer to certify. The amended section 17004.7 added two provisions addressed to implementation of an agency's pursuit policy. It requires that the agency provide annual training on its policy and that the agency require its officers to certify that they received, read, and understand the policy. When taken together, as they must be because an entity cannot obtain immunity without

satisfying both requirements, the training provision and the promulgation provision provide assurance that actual implementation of pursuit policies will occur. When an entity adopts a pursuit policy, provides annual training on the policy, and requires that all its officers certify in writing that they received, read, and understand the policy, it can be presumed that a vast majority of the officers will certify, as occurred here. It is undisputed in this case that the City trained its officers in its pursuit policy and required that they sign written certifications. The statute's focus on *agency* conduct permits room for of some officers to certify or for some misadventure with documentation, without depriving the entity of immunity.

Furthermore, if no officers or only a very few officers certify, it could be argued that the agency has not established that it actually imposed a requirement that all its officers certify. The Legislature demonstrated its intent to trust public agencies to implement their pursuit policies in good faith, even in the absence of a requirement that *every* officer certify that he or she received, read, and understands the agency's pursuit policy when it rejected earlier versions of the statute that would have made compliance with the conditions for immunity mandatory.

Even assuming that plaintiff is correct and the last sentence of subdivision (b)(2) is merely a statement that failure of an individual officer to certify does not create a cause of action against the officer or the entity, that interpretation merely eliminates one of multiple arguments in favor of the

City's interpretation that the statute does not condition immunity upon certification by each and every officer. It does not provide any affirmative support for plaintiff's interpretation that the statute requires certification by every officer as a condition of immunity.

D. THE CITY'S AND THE SECOND DISTRICT'S INTERPRETATION AVOIDS A BURDEN THAT IS SO ONEROUS AND UNFAIR AS TO UNDERCUT THE INTENDED PURPOSE OF INCENTIVIZING AGENCY CONDUCT, AND AVOIDS ABSURD RESULTS.

Section 17004.7 must be interpreted to mandate an agency-imposed certification requirement, rather than compliance with the certification requirement by every individual officer, because only that interpretation avoids an onerous, administratively unworkable, and unfair burden on law enforcement agencies and a potentially absurd result, which the Legislature cannot have intended.

In many situations, through no fault of its own and despite its best efforts, an agency will be unable to procure certification by *every* individual officer. An officer might miss training or be unavailable to sign a certification because he or she is on vacation, on family or medical leave, on military duty or jury duty, assigned to a special state or federal task force, attending educational programs or specialized training that can last up to several months (the FBI academy, for example, is a five-month training program), testifying in civil or criminal litigation, on administrative leave, or ill or on temporary

disability. Officers who miss training or certification for these reasons may return to active duty with the agency at any time. An officer might also be unable to certify because he or she is a new hire, not yet trained on the pursuit policy. The administrative burden is amplified for agencies with thousands of officers or State-wide agencies with hundreds of regional offices. Furthermore, inasmuch as training and certification should pertain to the pursuit policy in place at the time of a pursuit incident, it is unlikely that an agency will be able to accomplish the required training and certification when an incident occurs shortly after a new policy has been adopted, yet the Legislature cannot have intended to discourage updated and improved policies. Obtaining immunity under a 100 percent certification requirement would also be onerous and administratively challenging in the extreme and unfair because it conditions agency immunity on matters outside the agency's control.

Plaintiff's proposed solution is unworkable. She suggests that such employment events "should always be anticipated" and "[u]ltimately, the City, and any other public agencies, can and should be able to track the training of their respective peace officers before they are hired, take time off from work, and after they return to work from approved leave." [Op. Brf on the Merits, p. 20.] Apparently, plaintiff suggests that the agency must find a date on which to hold its annual training when every officer is available after having cross-checked the availability of all officers. Even if such a monumental scheduling task could be undertaken, plaintiff's proposed solution does not take into

account unscheduled absences due to illness or injury of the officer or his or her family members. Nor does it account for the fact that new officers may come onto the force at any time.[13] Conditioning agency immunity on officer compliance with the agency's certification requirement also creates the potential for abuse by affording a single disgruntled or manipulative officer an opportunity to inflict serious economic injury on a law enforcement agency by refusing to certify or by pressuring an agency for favorable treatment in exchange for certification. The Legislature cannot be deemed to have intended to open the door to potential abuse of the certification process.

An interpretation of the statute that denies immunity to an entity which, like the City of Gardena, adopts a vehicle pursuit policy that complies with statutory requirements, conscientiously provides the policy to all of its officers and trains them on the policy at least annually, and requires that all of its officers read and understand the policy and certify in writing that they have done so, merely because a single absent or recalcitrant or absent officer fails or

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[13] Plaintiff's interpretation requiring that every officer certify, but granting agency immunity so long as an agency has trained its officers and they have all certified within a year prior to the incident or within the previous calendar year, does not solve the fundamental administrative difficulty. Simply permitting more time does not address the administrative problem of cross-referencing the schedules of all the officers to find training dates that work for all the officers of the agency, which can never be done successfully due to unscheduled illnesses or injuries. Furthermore, excusing non-certification by all new hires for up to one year is not consistent with plaintiff's assertion that *every* officer must certify. [It should be noted that the statute requires that training be provided annually, but there is no requirement that officers certify more than once with respect to a given policy.]

refuses to sign a certification would be so extreme that it would undercut rather than foster the purpose of the statute to encourage law enforcement agencies to adopt and promulgate vehicle pursuit policies and to provide immunity to those agencies that do so.

An agency can adopt a pursuit policy; it can circulate the policy to its officers, it can provide training for its officers on the policy; it can institute a requirement that all officers certify that they have received, read, and understand the policy, and it can discipline officers who do not certify; but it cannot compel an absentee officer to certify. Absent a realistic opportunity for an entity to qualify for immunity, the statute will be ineffective in its intended purpose of encouraging law enforcement entities to adopt and promulgate vehicle pursuit policies so as to reduce collisions and injuries. The Legislature cannot be deemed to have intended a result that would render the requirements for immunity so difficult as to seriously undermine its purpose in offering immunity to law enforcement agencies that adopt and promulgate pursuit policies.

The *Ramirez* court noted the potentially absurd results that can occur under plaintiff's interpretation when it observed, "The City's interpretation would fulfill the Legislature's goal of motivating a public agency to implement its pursuit policy – including by *requiring* its officers to certify their receipt and understanding of that policy in writing - even if a few officers fail to full that requirement. On the other hand, requiring 100 percent compliance as a

condition of immunity could potentially result in the absurd circumstance that the failure of a single officer to complete a written certification in an agency employing thousands could undermine the agency's ability to claim immunity, even though the agency conscientiously implemented its pursuit policy." *Ramirez, supra,* 14 Cal.App.5th at 823 (emphasis in original). The Legislature cannot be deemed to have intended the absurd result of placing an agency's immunity in the hands of any individual officer. Nor can it be deemed to have intended to hold an agency liable, while its officer is immune under Vehicle Code section 17001. Correcting this inequitable situation was the intent of the Legislature in enacting Vehicle Code section 17004.7 in the first place. The Committee Statement on AB 1912 (which enacted Vehicle Code section 17004.7) states:

> Under current law a public employee is not liable for personal injury or property damage resulting from the operation of an emergency vehicle in immediate pursuit of an actual or suspected violator of the law. (Vehicle Code Section 17004). [¶] This immunity does not extend to the public entity itself. [¶] This anomaly has resulted in some public entities being sued for damages caused to third parties by person s felling form law enforcement officers in motor vehicles.... The ability of peace officers to pursue criminal suspects should not be curtailed on the basis of potential tort liability for injury caused by the fleeing party. [¶] AB 1912 would provide immunity for public entities from damages caused to third parties by persons fleeing from a peace officer in vehicular pursuit . . . where the public entity has adopted a policy on police vehicular pursuits that meets the criteria set forth in the bill.
> [Assem.Com. Statement on AB 1912, as amended August 20, 1987 (emphasis in original).]

Reason, practicality, and common sense support the conclusion that section 17004.7 requires that a public agency must implement a requirement that all of its peace officers certify, but the agency need not prove that 100 percent of its officers have actually complied with the requirement in order to obtain immunity.

E. POST GUIDELINES DO NOT PROVIDE SUPPORT FOR PLAINTIFF'S AND THE FOURTH DISTRICT'S INTERPRETATION OF THE PROMULGATION PROVISION.

The *Morgan* court asserts that its interpretation of the promulgation provision of section 17004.7 is supported by the POST commission. *Morgan, supra,* 246 Cal.App.4th at 159. The *Morgan* court cites to statements on the POST commission website that an agency "must provide all peace officers with a copy of the agency pursuit policy" and that "[p]eace officers must also sign an attestation form (doc) that states they have 'received, read, and understand' the agency pursuit policy" and cites to a link to an "attestation form." The court does not explain how the guidelines on the POST commission website or its creation of an attestation form support the court's interpretation of the promulgation provision. The quoted language does *not* state that *all* peace officers must sign an attestation form. Furthermore, as the court concedes, POST guidelines and course of instruction are a "resource" for agency use in the creation of a the agency's own pursuit policy. *Id.* at 154, 159.

Plaintiff asserts that to obtain immunity under section 17004.7, an agency must "adopt and promulgate a written policy" based upon "guidelines established pursuant to Penal Code section 13519.8," citing Vehicle Code section 17004.7(b)(1) and (d). [Op. Brf on the Merits, p. 28 (emphasis omitted).] However, section 17004.7 makes no reference to POST or to Penal Code section 1519.8 with respect to the *promulgation* requirement. POST is not mentioned in either subdivision (b)(1), which sets forth the promulgation requirement, or in subdivision (b)(2), which defines promulgation. The only reference to POST guidelines in section 17004.17 is in subdivision (d) which defines training as training that complies with the *training guidelines* established pursuant to section 13519.8 of the Penal Code. Furthermore, section 13519.8, itself, pertains to training guidelines, not to promulgation. There is no statutory requirement that promulgation or certification procedures comply with POST guidelines.[14]

IV. SUMMARY JUDGMENT IN FAVOR OF THE CITY SHOULD BE AFFIRMED BECAUSE THE CITY IS IMMUNE UNDER VEHICLE CODE SECTION 17004.7.

The requirements for immunity under section 17004.7 are: (1) adoption by the agency of a vehicle pursuit policy that meets certain content requirements; (2) promulgation of the policy by the agency by imposing a requirement that all officers certify in writing that they have received, read,

[14] Nor does either section 17004.7 or the POST website require use of a POST attestation form, or any form. Section 17004.7 requires only that officers "certify in writing."

and understand the policy; and (3) provision by the agency of annual training on the policy. City of Gardena showed that it satisfied all of these requirements.[15]

A. THE CITY'S VEHICLE PURSUIT POLICY SATISFIED THE POLICY CONTENT REQUIREMENT FOR IMMUNITY.

Vehicle Code section 17004.7 requires public agencies to address 12 specified standards in their pursuit policies, but leaves it to the agencies to determine the substance of the guidance to their officers on each standard. The merit of the policies is not subject to review. *McGee v. City of Laguna Beach* (1997) 56 Cal.App.4th 537, 548; see also, *Ketchum v. State of California* (1998) 62 Cal.App.4th 957, 969.

The statute requires agency pursuit policies to provide guidance to officers in determining: (1) under what circumstances to initiate a pursuit; (2) the total number of law enforcement vehicles authorized to participate in a pursuit, and their responsibilities; (3) communication procedures to be followed during a pursuit; (4) the role of the supervisor in managing and controlling a pursuit; (5) driving tactics and circumstances under which those tactics may be appropriate; (6) authorized pursuit intervention tactics, including "blocking, ramming, boxing, and roadblock procedures"; (7) the

[15] With respect to any argument advanced by plaintiff as to the sufficiency of the City's evidence and/or argument in support of its MSJ that is not addressed in this brief, the Court is respectfully referred to the City's moving and reply papers in support of the MSJ [1AA, Tabs 4-11, 21-27] and the City's Respondent's Brief in the Court of Appeal.

factors to be considered by a peace officer and supervisor in determining speeds during a pursuit; (8) the role of air support, where available; (9) when to terminate or discontinue a pursuit; (10) procedures for apprehending an offender following a pursuit; (11) effective coordination, management, and control of interjurisdictional pursuits; and (12) reporting and post-pursuit analysis "as required by Section 14602.1." Veh. Code §17004.7(c), as summarized in *Ramirez, supra,* 14 Cal.App.5th at 825, fn. 9.

The content of the City's pursuit policy is undisputed. Whether the City's policy addresses each of the content standards set forth in subdivision (c) is a question of law for the court. Veh. Code §17004.7(f). The City demonstrated in its MSJ that its policy satisfied the content requirements set forth in the statute. The trial court found that the City's policy met the content requirements of the statute and provided objective standards to guide officer decision-making.

On appeal plaintiff challenged the sufficiency of the City's policy with respect to only two of the 12 standards. Plaintiff asserted that the City's pursuit policy failed to address the standards set forth in subdivisions (c)(5) and (c)(6) on the grounds that the policy did not provide guidance on the circumstances in which driving tactics and pursuit intervention tactics may be used, and instead left full discretion to individual officers to use such tactics as they saw fit. [App. Op. Brf at 40-45.] Plaintiff makes the same arguments here.

Subdivisions (c)(5) and (c)(6) require that the agency's policy provide guidance on the following subjects:

> (5) Determine driving tactics and the circumstances under which the tactics may be appropriate.
>
> (6) Determine authorized pursuit intervention tactics. Pursuit intervention tactics include, but are not limited to, blocking, ramming, boxing, and roadblock procedures. The policy shall specify under what circumstances and conditions each approved tactic is authorized to be used.

With respect to pursuit intervention tactics, the policy directed that a pursuit should be initiated "only when a law violator clearly exhibits the intention to avoid arrest by using a vehicle to flee, or when a suspected law violator refuses to stop and uses a vehicle to flee." [1AA, Tab 11 at 167 (Police Manual).] The policy provided that when deciding whether to initiate a pursuit, officers need to consider the following factors: (1) the type of violation, whether actual or suspected; (2) accurate vehicle description and plate number; and (3) pursuit speeds, pedestrian and traffic conditions. [5AA, Tab 30 at 1196; 3AA, Tab 16 at 722-723 (DUMF 45); 1AA, Tab 11 at 167 (Police Manual).]

The policy directs that officers involved in a pursuit are to "continually question whether the seriousness of the violation reasonably warrants continuation of the pursuit." [1AA, Tab 11 at 170 (Police Manual).] The policy directed that a pursuit should be discontinued when there is a clear and unreasonable danger to the public or the pursuing officers; and it identified 13 factors officers should consider in deciding whether to discontinue a pursuit,

including when speed dangerously exceeds the normal flow of traffic, when pedestrian or vehicular traffic necessitates unreasonable and unsafe maneuvering of the vehicle, the duration and location of the pursuit, the volume of vehicular and pedestrian traffic, the time of day, weather and road conditions, the familiarity of the pursuing officers with the area of the pursuit, the quality of radio communications between pursuing units and dispatchers, the capability of the police vehicles involved, whether the suspect is identified and can be apprehended at a later point in time, and the overall risk posed to the public by the escape of the suspect and the likelihood that the suspect's actions will continue if the suspect is not apprehended. [5AA, Tab 30 at 1196-1197; 3AA, Tab 16 at 722-723 (DUMF 45); 1AA, Tab 11 at 170-171 (Police Manual).]

The City's pursuit policy also identified three circumstances under which pursuit should ordinarily be terminated: based upon the weather, the distance between the fleeing and pursuing vehicles, and the danger posed by continued pursuit - as opposed to the public safety value of apprehending the suspects. [3AA, Tab 16 at 722-723 (DUMF 45); 1AA, Tab 11 at 171 (Police Manual).]

In a separate section addressed to "pursuit driving tactics," the City's policy set forth ten points addressing driving tactics, including (among others): paralleling of the pursuit route, the units that are to drive "Code-3" (with lights and siren); caravanning; authority to join a pursuit; and restrictions on passing

other units. The pursuit policy also provided instructions regarding the roles and responsibilities of the primary unit and the secondary units involved in a pursuit. The section of the policy addressed to pursuit driving tactics also addressed forcible stop tactics, including the PIT maneuver used in this case. The policy instructed that all forcible stop tactics "shall only be used as a last resort in order to stop a fleeing violator in keeping with Department guidelines regarding use of force and pursuit policy." [1AA, Tab 11 at 169-170.] With respect to the PIT maneuver specifically, the policy stated that the maneuver "can be used to stop a pursuit, as soon as possible, with Watch Commander approval, if practical." [3AA, Tab 16 at 722-723 (DUMF 45); 5AA, Tab 30 at 1197; 1AA, Tab 11 at 167-170 (Police Manual).] Thus, undisputed evidence established that the City's vehicle pursuit policy satisfied subdivisions (c)(5) and (c)(6) of the statute.

The Court of Appeal found that the City's policy "contained specific guidance concerning the circumstances in which a pursuit is appropriate and the factors to consider in deciding whether to continue or terminate the pursuit." *Ramirez, supra,* 14 Cal.App.5th at 827. The court rejected plaintiff's argument that the City's pursuit policy did not provide guidance on the circumstances in which pursuit intervention tactics may be used, but rather left full discretion to individual officers to use such tactics as they saw fit. After reviewing cases comparing adequate and inadequate policies and analyzing the guidance given to officers in the City's policy and the factors they are directed

to consider, read in light of the policy as a whole, the Court of Appeal declared: "These policy provisions did not provide unfettered discretion to pursuing officers, as Ramirez claims. Rather, they 'appropriately "control[led] and channel[ed]" the pursuing officer's discretion' in deciding whether to use forcible tactics to stop a pursuit and apprehend a suspect. (*McGee, supra,* 56 Cal.App.4th at 546.) We therefore conclude that the City's pursuit policy in place at the time of the incident met the standards of section 17004.7, subdivision (c)." *Ramirez, supra,* 14 Cal.App.5th at 826, 829.

B. THE CITY SATISFIED THE PROMULGATION REQUIREMENT FOR IMMUNITY.

As established above, the promulgation requirement of section 17004.7, properly interpreted, requires that the agency impose a requirement that all of its officers certify in writing that they have received, read, and understand the agency's pursuit policy. In opposition to the City's MSJ and on appeal, plaintiff contended that the City failed to meet the promulgation requirement because it failed to proffer "evidence showing that *all* of its peace officers certified in writing on an annual basis that they received, read, and understood the PD pursuit policy." [App. Op. Brf at 10 (emphasis in original and omitted).]

In support of its MSJ, the City submitted evidence that it requires all of its officers to certify in writing that they received, read, and understand the City's vehicle pursuit policy. The City submitted the testimony of its

custodian of records, Lt. Saffell, that all of the City's operational officers are required to attend annual training, at which they receive a copy of the pursuit policy, take turns reading the policy aloud, and discuss application of the policy. [1AA, Tab 11 at 142:26-143: 9 (Saffell Dec., ¶11); 2AA, Tab 13 at 341:5; 384:8-12 (Osorio Depo); 3AA, Tab 14 at 641:5-25 (Ross Depo).] At the conclusion of the training the officers are required to certify in writing, either by signing a POST attestation form (in 2009 and 2010) or by signing the training roster after 2010), that they have received, read, and understand the policy. [1AA, Tab 11 at 143:5-9 (Saffell Dec., ¶11); 2AA, Tab 13 at 340:3-341:5; (Osorio Depo); 3AA, Tab14 at 642:5-11 (Ross Depo).]

The City also submitted evidence that all of the City's operational officers certified that they received, read, and understand the pursuit policy. It submitted a training attendance log listing all of the officers who were trained on the pursuit policy from July 2013 to June 2016. The training log reflects that in September and November of 2014 (within one year prior to the incident) 81 of the approximately 92 full-time sworn officers employed at the time of the pursuit, including all of the officers involved in the pursuit, attended vehicle pursuit policy training and signed the roster to certify that they attended and received, read, and understand the policy.[16] [1AA, Tab 11

[16] Plaintiff complains that the attendance roster is inadmissible because it was "generated" in response to a discovery request made in the course of litigation after the incident. [Op. Brf on the Merits, p. 11 and fn. 3.] However, plaintiff waived that objection by submitting the attendance

at 155-157 (training log) 1AA, Tab 11 at 144-145 (Saffell Dec., ¶16); 2AA, Tab 13 at 339:11-341:5; 344:7-13; 345:19-346:16; 348:1-349:18; 356:2-357:15; 381:1-22: 382:6-19 (Osorio Depo).] The City also submitted POST attestation forms signed in 2009 and 2010 by 64 of the approximately 92 full-time sworn police officers employed at the time of the incident, including the officers involved in the pursuit, certifying that they received training on the pursuit policy and that they received, read, and understand the City's vehicle pursuit policy. [3AA, Tab 16 at 722 (DUMF 45), 1AA, Tab 11 at 219-283 (POST attestations); 1AA, Tab 11 at 144-145 (Saffell Dec., ¶16.] Lt. Saffell explained that although some of the POST attestations may have been lost during the department's move to a new police station, all of the officers had completed such certifications. [1AA, Tab 11, at 145:1-7 (Saffell Dec., ¶16.][17]

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roster on her own behalf in opposition to the MSJ. *James v. Tully* (1918) 178 Cal. 308, 384. Moreover, the Custodian of Records laid the foundation to qualify the attendance roster as a business record by testifying that training forms of those officers who attended training were provided to a records assistant who entered the information on the training forms into the electronic system. The log is maintained and updated as additional training is provided. [1AA, Tab 1 at 142:1-5 (Saffell Dec., ¶8); 2AA, Tab 13 at 407:3-15 (Saffell depo).] The attendance roster was merely printed, not generated, in response to plaintiff's discovery request. The trial court overruled plaintiff's objections to the City's evidence and to Saffell's declaration. [5AA, Tab 30 at 1200: 22-1201:1-3.] The Court of Appeal also rejected plaintiff's argument that the attendance roster was inadmissible hearsay on the ground that plaintiff waived any objection to its admissibility by introducing the log in support of her opposition to the MSJ before the trial court had ruled on her objection. *Ramirez, supra,* 14 Cal.App.5th at 810, fn. 6.

[17] Although it is true that the words "I am informed and believe" appear in Lt. Saffell's declaration in connection with his testimony regarding the

On appeal, plaintiff argued that the statute requires proof that *every* officer certified in writing that he or she received, read, and understands the City's pursuit policy and that such proof must be made by a signed POST attestation form. Plaintiff argued that the City's proof was insufficient because Lt. Saffell's declaration that all of the officers who were employed at the time of the incident had completed written certifications was made "on information and belief" and the City's documentary proof of certification was inadequate because the City did not submit original POST attestation forms signed by every officer and because the electronic training log, on which the names of the officers who signed the training roster certification were electronically maintained, was not an original document with the officer's signatures on it, and it was hearsay. [App's Op. Brf at 35-38.]

The Court of Appeal found there was no dispute that the City actually had a requirement that its officers execute the requisite written certification, noting that Lt. Saffell testified that the City provides training on its pursuit

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attestation forms, review of the substance of the declaration reflects personal knowledge on the part of Lt. Saffell based on review of department records. The declaration establishes that Lt. Saffell was a Lieutenant with the Gardena Police Department during 2009 and 2010, when the certifications referenced in his declaration were generated and before some of them were apparently lost. Lt. Saffell's declaration reads: "**Upon review of my Department's records**, I am informed and believe that **all of the officers who were employed at the time of the incident completed certifications** such as these [Attestations Forms attached as Exhibit M to the declaration] regarding their receipt, review, and understanding of the GPD vehicle pursuit/safe policies." [1AA, Tab 11, at 139, 144-145 (Saffell Dec. at ¶¶2, 3, 16 (emphasis added)).]

policies on an annual basis to all of its active duty police officers, and that each officer is required to certify that he or she has read, received, and understands the City's policy and that in opposing the MSJ, plaintiff did not controvert the existence of the City's certification requirement, only that the City failed to promulgate its policy by failing to require that each and every officer certify in writing that he or she received, read, and understands the policy. *Ramirez, supra,* 14 Cal.App.5th at 825.

In light of its ruling that section 17004.7 does not require that every officer certify, the Court of Appeal did not reach the question of the adequacy of Lt. Saffell's declaration that all officers certified because "other evidence that the City submitted – in the form of the POST certifications and the electronic training log – is sufficient to support summary judgment," even though that evidence did not establish certification by each and every officer.[18] *Ramirez, supra,* 14 Cal.App.5th at 819.

The City submitted undisputed evidence that it required all of its officers to certify in writing that they received, read, and understand the City's

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[18] The Court of Appeal rejected plaintiff's argument that the training log was inadmissible hearsay because although she objected to the log, plaintiff also introduced the log in support of her own opposition to the City's summary judgment motion before the court ruled on her objection and thereby waived any objection to its admissibility, citing *People v. Williams* (1988) 55 Cal.3d 883, 912. The Court of Appeal also rejected plaintiff's argument that certification can be proved only by introducing the certification documents themselves, stating that section 17004.7 contains no limitation on how certification may be proved. *Ramirez, supra,* 14 Cal.App.5th at 819, fn. 6.

pursuit policy and that the vast majority of the officers complied with the requirement and did so certify. Accordingly, the City proved that it complied with the promulgation condition set forth in section 17004.7.

C. THE CITY SATISFIED THE ANNUAL TRAINING REQUIREMENT FOR IMMUNITY.

In order to qualify for entity immunity an agency must "provide[] regular and periodic training on an annual basis." Veh. Code § 17004.7(b)(1). A determination of whether the agency complied with the training requirement is a question of law for the court. Veh. Code § 17004.7(f). The City submitted undisputed evidence that it provides training on its pursuit policy on at least an annual basis to all active duty police officers. [1AA, Tab 11 at 142-143 (Saffell Dec., ¶11); 175-205 (training curriculum); 3AA, Tab 16 at 722 (DUMF 45); 1AA, Tab 11 at 147-150, 152-153, 155-157, 217-218 (Exhs. D, E, F, M to Saffell Dec.).]

The trial court found that "All active duty police officers received the training on an annual basis or more frequently . . . ." [5AA , Tab 30 at 1193:14-15.]

V. CONCLUSION

City of Gardena urges the Court to answer "no" to the question for review; to rule that Vehicle Code section 17004.7 only requires that to qualify for immunity, an agency must institute a requirement that all of its operational officers certify that they have received, read, and understand the agency's

pursuit policy, but that the statute does not require compliance with the agency's certification requirement by each and every one of the agency's officers; to overrule *Morgan v. Beaumont Police Department* to the extent it holds to the contrary; and to affirm summary judgment in favor of City of Gardena inasmuch as it is entitled to immunity under Vehicle Code section 17004.7, as a matter of law.

Dated: February 6, 2018

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CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rule 8.504(d)(1), I hereby certify that this Answer Brief on the Merits was produced using Microsoft Word word processing software and that the body of the brief contains 13,863 words, based on the word count provided in the Word program.

February 6, 2018

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 801 S. Figueroa St, 15th Floor, Los Angeles, CA 90017-3012.

On February 6, 2018, I served true copies of the following document(s) described as **ANSWER BRIEF ON THE MERITS** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 6, 2018, at Los Angeles, California.

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