**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

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| IRMA RAMIREZ, individually and as Representative,<br><br>Plaintiffs and Appellants,<br><br>vs.<br><br>CITY OF GARDENA,<br><br>Defendant and Respondent. | Case No. S244549<br><br>Second Appellate District, Division One<br>No. B279873<br><br>Los Angeles County Superior Court<br>No. BC609508 |



# APPLICATION OF LEAGUE OF CALIFORNIA CITIES FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF CITY OF GARDENA; PROPOSED AMICUS CURIAE BRIEF

The Honorable Yvette M. Palazuelos

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## CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

☒ There are no interested entities or persons to list in this Certificate per California Rules of Court, rule 8.208.

☐ Interested entities or persons are listed below:

| Name of Interested Entity or Person | Nature of Interest |
|---|---|
| 1. | |
| 2. | |
| 3. | |
| 4. | |

Please attach additional sheets with person or entity information if necessary.

Dated: March 21, 2018

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| Party Represented: | League of California Cities, as Amicus Curiae |

## APPLICATION TO FILE AMICUS CURIAE BRIEF

Pursuant to California Rules of Court, rule 8.520(f), the League of California Cities (the "League") hereby respectfully submits this application to file an amicus curiae brief in support of Defendant and Respondent City of Gardena ("the City").

The League is an association of 474 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the state. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

The 474 cities in the League administer local police departments throughout the state of California. The Court's decision in this case regarding the certification requirement in Vehicle Code section 17004.7 ("Section 17004.7") will apply not just to the City of Gardena, but to all police departments and other public agencies employing peace officers across the state. It will have a significant impact on those departments in determining whether they can count on immunity under Section 17004.7, or whether they will be vulnerable to suit on a case by case basis for injuries resulting from vehicular collisions by fleeing suspects. Moreover, while the City of Gardena has a police force of 92 sworn officers, many police departments in California are substantially larger. The San Francisco Police Department has a force of 2,291 sworn officers as of February, 2018, and the Los Angeles Police Department has a force of 10,029. The League has a particular interest in ensuring that the Court considers the impact of

its decision on larger police departments in California, to which the immunity should be equally available.

The League and its counsel are familiar with the issues in this case, and have reviewed the lower court proceedings and the briefs on the merits filed with this Court. As a statewide organization of cities responsible for administering police departments throughout California, the League believes that it can provide important perspective on the issues before the Court.

Pursuant to rule 8.520(f)(4) of the California Rules of Court, no party nor counsel for any party in the pending appeal has either authored any part of the attached amicus brief or made a monetary contribution toward funding the preparation or submission of the brief. The only persons who played a role in authoring the accompanying brief are salaried attorneys from the San Francisco City Attorney's Office and the League. No person or entity other than the San Francisco City Attorney's Office and the League has made a monetary contribution toward funding the preparation or submission of the attached amicus brief.

Dated: March 21, 2018

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City Attorney
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# AMICUS CURIAE BRIEF OF LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF CITY OF GARDENA

The Honorable Yvette M. Palazuelos

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## I. 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?

## II. INTRODUCTION

California Vehicle Code section 17004.7 ("Section 17004.7") provides a limited immunity to any "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). . . ." (Section 17004.7(b)(1).) An agency meeting the above requirements 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" in the course of a real or perceived police pursuit. (*Ibid.*) Subdivision (c) of the statute defines the substantive requirements for a vehicular pursuit policy, while subdivision (d) defines what constitutes "regular and periodic training."

Subdivision (b)(2) – the part of the statute most directly at issue here – defines what constitutes adequate "promulgation" of a vehicular pursuit policy. Subdivision (b)(2) states in full: "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." In other words, an agency asserting the immunity must not only have a written policy meeting the requirements

of subdivision (c), and provide training meeting the requirements of subdivision (d), but must also have a "requirement" that all of its officers sign a certification acknowledging receipt and comprehension of the policy.

Petitioner argues that Section 17004.7 requires a public agency to prove that every single one of its peace officers *actually signed* a certification pursuant to subdivision (b)(2) , and to additionally *produce* every single one of those certifications in court, in order to avail itself of the immunity. Petitioner's position conflicts with the clear language of the statute, which defines promulgation by reference to a certification *requirement* and expressly states that "[t]he failure of an individual officer to sign a certification shall not be used to impose liability on an individual officer or a public entity." (Section 17004.7(b)(2) .) Petitioner's interpretation is also unreasonable in light of the administrative realities facing California's police departments, and would be particularly onerous and impracticable for larger departments. Indeed, Petitioner's reading would lead to absurd consequences and create administrative problems in proceedings where agencies attempt to invoke the immunity. Finally, Petitioner's interpretation directly undermines the legislative purposes behind the adoption and amendment of Section 17004.7. For the foregoing reasons, and as discussed below, the Court should affirm the decision of the Court of Appeal and hold that public agencies need not prove perfect compliance with the certification requirement in order to invoke immunity under Section 17004.7.

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## III. ARGUMENT

### A. Pursuant to the Plain Language of Section 17004.7, Agencies Must Have a Policy of Requiring Signed Certifications but Need Not Prove Perfect Compliance with That Policy.

Subdivision (b)(2) provides that "[p]romulgation 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." Petitioner argues that the above language requires agencies to demonstrate that *100%* of their officers have *actually executed* certification forms as of the date of a given incident. (Petitioner's Opening Brief on the Merits ("Opening Brief") at pp. 6-7.) However, Petitioner's argument is belied by the statutory language itself, which centers on the existence of a *requirement* and not the extent of compliance with that requirement.

More importantly, the statute *expressly states* that perfect compliance with the certification requirement is not required. Subdivision (b)(2) provides that "[t]he failure of an individual officer to sign a certification shall not be used to impose liability on an individual officer or a public entity." This sentence fully and conclusively answers the question before the Court, and should be the end of the inquiry. (See *Day v. City of Fontana* (2001) 25 Cal.4th 268, 272 ["We begin by examining the statutory language, giving the words their usual and ordinary meaning. [Citation.] If there is no ambiguity, then we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations.]"].) The Legislature could not have been clearer that any individual officer's failure

to *actually* sign the certification *does not vitiate the immunity* for the agency.

Petitioner contends that the above language says nothing about what constitutes adequate "promulgation" under the statute, but rather clarifies that failure to sign a certification is not *independently actionable* against an officer or agency. Petitioner's argument is nonsensical. Section 17004.7 establishes an immunity, as evidenced by its first sentence: "The immunity provided by this section is in addition to any other immunity provided by law." (Section 17004.7(a) .) Nothing in Section 17004.7 can plausibly be read to *create* a new cause of action against an officer or agency for failing to sign a certification – particularly since the adoption of a vehicular pursuit policy under Section 17004.7 is entirely discretionary. (*Ibid.*) As such, there is no plausible need for the Legislature to "clarify" that failure to sign a certification does not give rise to liability. Petitioner's interpretation renders the last sentence of subdivision (b)(2) surplusage. (See *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387 ["A construction making some words surplusage is to be avoided."].)

Petitioner insists that the City and the Court of Appeal have "confused the legal concepts of 'liability' and 'immunity'" in interpreting the last sentence of subdivision (b)(2). (Opening Brief at p. 19.) However, Petitioner's attempt to distinguish between imposing liability and vitiating immunity is specious. As a practical matter, finding the immunity inapplicable exposes the agency to liability. (See *Ramirez v. City of Gardena* (2017) 14 Cal.App.5th 811, 822 ["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."].) Petitioner's

attempt to wave away a critical sentence in the statute's definition of promulgation is unavailing.[1] The only conceivable purpose of the last sentence in subdivision (b)(2) is to clarify that perfect compliance with the certification requirement is not necessary to demonstrate adequate promulgation, and does not expose the agency to liability for which it would otherwise be immune.

The City's reading of subdivision (b)(2) is consistent with the Legislature's intent to condition immunity on the actions of the *agency* rather than those of individual officers. The Senate Committee on the Judiciary noted that Section 17004.7 as amended "would enact the measures suggested by law enforcement groups, attaching immunity when public entities adopt and promulgate appropriate policies and institute sufficient training requirements, *regardless of officers' behavior in a particular pursuit.*" (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 719 (2005-2006 Reg. Sess.) May 10, 2005, p. 6 [emphasis added]; see also *Ramirez, supra*, 14 Cal. App. 5th at p. 824 ["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."].) The emphasis on agency policy as opposed to officer compliance is equally applicable to the certification requirement as it is to any other directive in an agency's vehicular pursuit policy.[2]

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[1] The specific phrasing that the failure of an officer to sign a certification "*shall not be used to*" impose liability on an individual officer or a public entity further supports the City's interpretation. (Section 17004.7 (b)(2) .) Such phrasing would be strange if the Legislature meant to convey that failure to sign a certification does not *directly* give rise to liability.

[2] The Legislature amended Section 17004.7 in part to address the concerns articulated by the court in *Nguyen v. City of Westminster* (2002) 103 Cal.App.4th 1161, superseded by statutory amendment as stated in

If the Legislature intended to condition immunity on perfect compliance with the certification requirement, it could easily have done so. For example, subdivision (b)(2) could have been drafted to read, "An agency's policy shall be deemed promulgated *only if all peace officers of the public agency have certified* in writing that they have received, read, and understood the policy." Alternatively, the Legislature could have used the same verbal construction as in subdivision (d), which states that "'Regular and periodic training' under this section *means* annual training that shall include [certain substantive requirements]" (emphasis added). The Legislature's use of the same grammatical construction in subdivision (b)(2) would have supported Petitioner's argument. (See, e.g., *Hoffman v. Smithwoods RV Park, LLC* (2009) 179 Cal.App.4th 390, 404-05, quoting *People v. Jones* (1988) 46 Cal.3rd 585, 596 ["[W]hen different words are used in . . . adjoining subdivisions of a statute, the inference is compelling that a difference in meaning was intended."]; *Genlyte Group, LLC v.*

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*Morgan v. Beaumont Police Dept.* (2016) 246 Cal.App.4th 144. The *Nguyen* court noted that the statute as written required only that the agency *adopt* a vehicular pursuit policy, even if the policy was never disseminated or taught to officers. (*Id.* at p. 1168 ["[T]he law in its current state simply grants a 'get out of liability free card' to public entities that go through the formality of adopting such a policy. There is no requirement the public entity implement the policy through training or other means."].) In response to these concerns, the Legislature added the requirements that agencies "promulgate[]" and provide "regular and periodic training" on their vehicular pursuit policies in addition to "adopt[ing]" them. (Section 17004.7(b)(1).)

At the same time, the Legislature rejected several more "extreme" proposed amendments that would have made immunity contingent on the behavior of individual officers. (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 719 (2005-2006 Reg. Sess.) as amended May 5, 2005, p. 2.) The language ultimately adopted was intended as "a more moderate approach to balance the various interests. . . ." (*Ibid.*) The City's interpretation of the certification requirement is more consistent with the Legislature's intent to encourage agencies to disseminate their policies and provide regular training, but without adopting a harsh standard that would condition immunity on individual officers' compliance with agency policies.

*Workers' Comp. Appeals Bd.* (2008) 158 Cal.App.4th 705, 719, quoting *In re Zacharia D.* (1993) 6 Cal.4th 435, 451 ["We are reluctant to conclude that the Legislature's use of different terms, at different times in the statutory scheme, is meaningless."].) Instead, the statute defines promulgation by the existence of a certification "requirement" and not the act of signing – in addition to expressly clarifying that the failure of any officer to actually sign a certification does *not* deprive the agency of immunity.

### B. The POST Guidelines Are Irrelevant to the Certification Requirement.

Petitioner attempts to invoke the Police Officer Standards and Training ("POST") guidelines in arguing that an agency must prove perfect compliance with the certification requirement in order to qualify for Section 17004.7 immunity. Petitioner's primary if not sole authority for that argument is an excerpt from the Question and Answer section of the POST website, which states: "[A]gencies must provide all peace officers with a copy of the agency pursuit policy . . . [p]eace officers must also sign an attestation form (doc) that states they have 'received, read, and understand' the agency pursuit policy. The agency must retain this form." (Opening Brief at pp. 29-30, italics omitted.)

The above excerpt does not support Petitioner's argument for a number of reasons. First, the language cited is informal content from the POST website and not the text of actual guidelines.[3] Second, though the website *advises* agencies to keep copies of the attestation forms, it does *not*

[3] The guidelines themselves are simply "a resource for each agency executive to use in the creation of a specific pursuit policy," as the court in *Morgan v. Beaumont Police Department* acknowledged. (*supra*, 246 Cal.App.4th at p. 154.)

state that proof of perfect compliance with the certification requirement is necessary as a predicate for the immunity. Finally, and most importantly, Section 17004.7 *does not incorporate POST guidelines with respect to promulgation.* The only mention of the POST guidelines in Section 17004.7 is in subdivision (d), which addresses the type of training necessary to qualify for the immunity. Subdivision (d) states: "'Regular and periodic training' under this section means annual training that shall include, at a minimum, coverage of each of the subjects and elements set forth in subdivision (c) and that shall comply, at a minimum, with the training guidelines established pursuant to Section 13519.8 of the Penal Code [known as the POST guidelines]." Accordingly, vehicular pursuit *training* must comply with the POST guidelines in order for an agency to qualify for immunity. By contrast, subdivision (b)(2), which addresses promulgation, makes no mention of the POST guidelines whatsoever.[4] The Legislature could easily have incorporated the POST guidelines with respect to promulgation in subdivision (b)(2) or other subdivisions of the statute, but declined to do so. As such, it would be improper to import the POST guidelines into other subdivisions of Section 17004.7 when the statutory language expressly limits the relevance of the POST guidelines to the training requirement in subdivision (d).

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[4] Petitioner blatantly mischaracterizes the statute in stating that agencies "must 'adopt and promulgate a written policy' based upon 'guidelines established pursuant to Penal Code section 13519.8.'" (Opening Brief at p. 28, italics omitted.) The above sentence misleadingly combines clauses from two entirely different subdivisions of the statute – subdivision (b)(2) and subdivision (d) – and is not an accurate summary of the statute.

### C. A Perfect Compliance Requirement Would Be Inconsistent with the Administrative Realities Facing California Police Departments, Particularly Larger Departments.

According to Petitioner, public agencies must prove that literally every single one of their officers has signed a certification at the time of a given incident in order to establish Section 17004.7 immunity. In addition to the fact that Petitioner's reading is inconsistent with the statutory language, such a requirement would be so onerous as to be impracticable, particularly for larger departments. California's police forces have constantly changing rosters as officers retire, join the force, and depart or return from various types of leave. At any given point in time, officers may be out on vacation, mandatory furlough, family medical leave, sick leave, disability leave, paid or unpaid administrative leave, paid or unpaid suspension, or military leave, among other reasons. Moreover, many police departments onboard new officers throughout the year. For example, the San Francisco Police Department ("SFPD") adds approximately 75 to 100 new officers in three or four different "classes" annually.

Given the constantly revolving roster, it would be difficult for police departments to ensure that every single officer had signed a certification at all times. By way of illustration, the SFPD has approximately 2,291 sworn police officers on the force. As of February 16, 2018, 58 of those officers were out on disability leave, 41 were out on family and medical leave, and 7 were out on military leave (not to mention other types of leave, which were omitted for purposes of simplicity). The effect of these numbers is that SFPD officers join the force or return from leave on a more or less weekly basis.

According to the statutory construction urged by Petitioner and the *Morgan* Court, even if an agency were to ensure that each new recruit or

returning officer did not operate a vehicle until he or she had received the vehicular pursuit training and signed a certification, his or her mere *presence* on the force in the hours or days prior to signing a certification would void the immunity for *the entire department*. This nonsensical scenario illustrates the untenable nature of Petitioner's argument.[5]

Petitioner asserts that all of the types of leave discussed above are "typical for all employers and should always be anticipated as time off for whatever reason must be requested and approved in advance." (Opening Brief at p. 20.) Petitioner is simply incorrect. Many types of leave are unanticipated, including illness, medical leave, disability leave, and disciplinary leave. Even if the only possible cause of absence were pre-scheduled vacations, however, large agencies would have to routinely cross-check the vacation schedules of thousands of officers to ensure complete compliance with the certification requirement at all times. Petitioner's reading is simply untenable in light of the administrative realities facing California police departments and should be rejected.

### D. Petitioner's Interpretation of the Statute Would Create Administrative Problems in Proceedings Where Agencies Attempt to Invoke the Immunity.

Petitioner additionally argues that Section 17004.7 requires an agency to produce the actual certification forms for every single officer on the force in order to establish the agency's entitlement to immunity. Petitioner's reading would have the extreme effect of forcing large police

[5] In addition, a perfect compliance requirement would disincentivize revisions to an agency's vehicular pursuit policy. Agencies would have to scramble to train their entire force and obtain certifications immediately upon revising the policy to avoid the risk of liability. According to Petitioner, even one officer's absence at the time of a policy revision would expose the whole agency to suit.

departments to produce up to *10,000 individual certification forms* in court. Those 10,000 forms would then have to be cross-checked against a master roster of officers on the force at the time of the incident in order to ensure that not a single officer was unaccounted for. Such a process would be hugely burdensome not just for the agencies but also for the courts.

Petitioner's argument runs counter to the purpose of the immunity, which is to *relieve* agencies from protracted and expensive litigation where the agency has met the threshold requirements laid out in Section 17004.7.[6] In considering the 2005 amendment to Section 17004.7, the Legislature considered several proposed amendments that would have made immunity contingent on officers' compliance with the pursuit policy. However, the Legislature rejected those proposals out of concern that they would lead to "protracted litigation regarding every pursuit that results in injury to a third party." (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 719 (2005-2006 Reg. Sess.) as amended May 5, 2005, pp. 2, 7-8.) Similarly, a perfect compliance requirement for certifications would lead to a trial within a trial with voluminous documentary evidence and detailed factual findings. That is the exact *opposite* of the Legislature's intended goal to relieve agencies from fact-specific litigation once they have complied with the overarching policy-level predicates outlined in Section 17004.7.[7]

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[6] Indeed, Section 17004.7 (f) provides that whether an agency has met the predicates for the immunity is a question of law for the courts, rendering it susceptible to resolution at preliminary stage of proceedings in the interests of minimizing governmental and taxpayer expense.

[7] In addition, requiring agencies to produce officers' individual certifications could implicate privacy concerns, as peace officer personnel files in California are confidential by statute. (See, e.g., Evid. Code, § 1043; Pen. Code, § 832.7 [providing that "[p]eace officer [] personnel records . . . are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code."].) These provisions could pose complications for

Moreover, Petitioner's demand that agencies produce individual certifications in court is entirely unsupported by the language of the statute. Section 17004.7 does not dictate any particular method of proof in establishing that the predicates for the immunity have been met. Nothing in the statutory language precludes agencies from proving the existence of a certification requirement through printouts of departmental records or a declaration from a custodian with knowledge, for example. Petitioner attempts to impose a specific evidentiary burden on agencies that finds no basis in the statutory language.

In sum, Petitioner's argument that agencies must produce individual certifications in court is impractical, unsupported by the statutory language, and contrary to the purpose of the immunity. Fortunately, the statute only requires agencies to establish the existence of a certification *requirement* as a matter of policy and not perfect compliance as a factual matter. As such, agencies may establish the predicates for immunity by proving the existence of a certification requirement, the contents of their pursuit policy, and the frequency and content of their trainings.[8]

### E. Petitioner's Reading Would Lead to Absurd and Unfair Results.

It is axiomatic that statutes must be construed to avoid impractical or absurd consequences. (See, e.g., *Yohner v. California Dept. of Justice* (2015) 237 Cal.App.4th 1, 8 [Courts should "avoid an interpretation that would lead to absurd consequences."]; *Sacks v. City of Oakland* (2010) 190

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agencies that attempt to invoke Section 17004.7 immunity while still assiduously protecting their officers' privacy rights.

[8] Requiring agencies to prove the existence of a certification requirement is not a mere formality. If an agency had a requirement on paper but made no bona fide attempt to obtain signatures in practice, it is questionable whether the agency could meet its burden of establishing that certifications were actually *required.*

Cal.App.4th 1070, 1082, as modified on denial of reh'g (Jan. 5, 2011) [statutes "should be interpreted to make them workable and reasonable [], . . . practical [], in accord with common sense and justice, and to avoid an absurd result []."].) As discussed above, given the administrative realities inherent in providing trainings and collecting certifications from a force of 10,000 officers, requiring proof of perfect compliance for an agency to avail itself of the immunity would be unreasonably punitive.

Petitioner's reading is also unfair in that it would render the immunity contingent on conduct outside the agency's control and allow a single officer to destroy the immunity for an entire agency. While an agency can *require* its officers to sign certifications, and even impose disciplinary consequences for failure to do so, the agency cannot force its officers to sign the form as Petitioner suggests. Even if the agency were to initiate disciplinary proceedings against an officer who failed or refused to sign a certification, such proceedings must comply with procedural mandates and cannot be completed overnight. In the meantime, Petitioner would have the entire agency stripped of immunity based on the actions of one officer. As the Court of Appeal noted below, "Under [*Morgan's*] interpretation, an agency could do all within its power to implement its pursuit policy but still be liable if a single negligent or recalcitrant officer happens to be out of compliance with the agency's certification requirement at the time an incident occurs." (*Ramirez*, *supra*, 14 Cal.App.5th at p. 824.)

### F. Petitioner's Reading Undermines the Legislative Intent and Purposes Behind the Immunity.

Both parties acknowledge that a major motivation behind the 2005 amendment to Section 17004.7 was to incentivize better vehicular pursuit policies and training in the hopes of minimizing civilian injuries. (Opening

Brief at p. 22; Respondent's Answer Brief on the Merits at p. 26.) However, Petitioner's reading of the certification requirement renders the immunity effectively unattainable for larger police forces, thereby undermining any incentive to comply with the statute. Nothing in the legislative history suggests that the immunity was intended to apply only to smaller police forces. To the contrary, the interest in incentivizing sound vehicular pursuit policies and training may be even *more* important for larger departments. To conclude that one officer's failure to sign a certification voids the immunity for the entire department would undercut the legislative purpose behind the 2005 amendment.

Furthermore, for Section 17004.7 to operate as an effective incentive for agencies, the immunity must be not only *attainable* but also *predictable*. Under Petitioner's reading, an agency's eligibility for immunity would be a moving target. An agency could be entitled to the immunity on one day and not the next because a single new officer joined the force. Agencies would have no way of knowing in advance whether they could count on the immunity without undertaking a new cross-check of signed certifications against an ever-changing roster.

The unpredictability of a perfect compliance requirement would also undermine the original purpose behind Section 17004.7, which was to grant officers discretion to undertake vehicular pursuits without the threat of civil liability. (See *Billester v. City of Corona* (1994) 26 Cal.App.4th 1107, 1122, 1132 [noting that a central purpose behind the original immunity was to "free police officers from the fear of exposing their employers to liability when engaging in high-speed pursuits"]; *Kishida v. State of California* (1991) 229 Cal.App.3d 329, 338, superseded by statutory amendment as stated in *Morgan*, *supra*, 246 Cal.App.4th 144 [noting that Section 17004.7

was adopted in order to "free the officers from the fear of exposing the entity to liability when making the determination of whether to engage in such a pursuit or to terminate it once it has begun"].) Officers cannot be free of the threat of agency liability if the availability of the immunity varies from day to day.[9]

Finally, the limited scope of Section 17004.7 evidences a policy determination by the Legislature that agencies *should* be relieved from liability under the limited factual scenarios covered by the statute. Petitioner consistently mischaracterizes Section 17004.7 as a broad immunity for "incidents of injury or death caused in the course of a police pursuit." (Opening Brief at p. 7.) In fact, Section 17004.7 only provides immunity to police departments for injury or property damage caused by the collision of a *vehicle operated by a fleeing suspect.* (17004.7(b)(1) [providing that a public agency meeting certain requirements "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. . . ."].) The statute does not provide immunity for injuries caused by collision with officers' vehicles, or injuries caused in any other manner during the course of a vehicular pursuit. (*Ibid.*; see also *Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 128, disagreed with on other grounds by *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26 ["[T]he critical question is whether the plaintiff's injuries resulted from the collision of a vehicle being operated by a fleeing suspect."].) While Section 17004.7 requires certain policy and training

[9] By contrast, an immunity contingent on the agency's overarching policies and practices is predictable and within the agency's control.

requirements in an attempt to encourage safer police practices, the immunity was intended to be reasonably available to departments, and reflects the Legislature's view that immunity in such factual scenarios is appropriate. (See *Kishida, supra*, 229 Cal.App.3d at p. 338, italics omitted [noting that the original purpose of Section 17004.7 was to "confer immunity on governmental entities"]; Assem. Com., Statement on Assem. Bill No. 1912 (1987-1988 Reg. Sess.) as amended Aug. 20, 1987 [concluding that "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"].) The immunity was *intended* to be available for agencies in the limited factual scenarios that it covers, and should be interpreted consistently with that intent.

## IV. CONCLUSION

For the foregoing reasons, the League urges the Court to affirm the decision of the Court of Appeal and trial court below.

Dated: March 21, 2018

DENNIS J. HERRERA
City Attorney
YVONNE R. MERÉ
Chief of Complex and
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CHRISTINE VAN AKEN
Chief of Appellate Litigation
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By: _____
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## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Times New Roman typeface. According to the "Word Count" feature in my Microsoft Word for Windows software, this brief contains 4,666 words up to and including the signature lines that follow the brief's conclusion.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on March 21, 2018.

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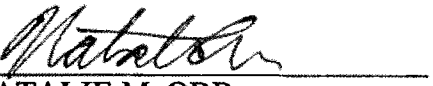
By: 
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## CERTIFICATE OF SERVICE

I, Alison Lambert, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On March 21, 2018, I served the attached

**APPLICATION OF LEAGUE OF CALIFORNIA CITIES FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF CITY OF GARDENA; PROPOSED AMICUS CURIAE BRIEF**

on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

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California Supreme Court
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San Francisco, CA 94102
(1 Original & 8 copies)
(Hand Delivery)

Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at

my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

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

Executed March 21, 2018, at San Francisco, California.

Alison Lambert

ALISON LAMBERT