IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA

IRMA RAMIREZ et al.,

Plaintiff and Appellant,

v.

CITY OF GARDENA,

Defendant and Respondent.

Supreme Court Case No. S244549

Court of Appeal, Second Appellate District, Division One
Case Number B279873
Superior Court of the State of California for the County of Los Angeles
Case Number BC609508
The Honorable Yvette M. Palazuelos, Judge Presiding

ANSWER TO THE AMICUS CURIAE BRIEFS SUBMITTED BY THE LEAGUE OF CALIFORNIA CITIES, CALIFORNIA POLICE CHIEFS ASSOCIATION, CALIFORNIA STATE SHERIFFS' ASSOCIATION, AND THE CALIFORNIA PEACE OFFICERS' ASSOCIATION

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I. INTRODUCTION

Two *amicus curiae* briefs were separately filed on behalf of the League of California Cities (the "League") and the California Police Chiefs Association ("CPCA"), California State Sheriffs' Association ("CSSA"), and the California Peace Officers' Association ("CPOA") in support of the positions asserted by Defendant and Respondent the City of Gardena (the "City"). The *amicus curiae* contend that the plain language of Vehicle Code section 17004.7 and its legislative history should be entirely disregarded because the administrative burdens of annually training in pursuit and having "all peace officers" certify in writing as to their completion of that training is too onerous for law enforcement agencies to meet. The City, League, CPCA, CSSA, and the CPOA effectively take the position that the statute does not mean what it says and the legislative history behind the 2007 amendment specifically adding the "promulgation" requirement to Vehicle Code section 17004.7(b) is entirely irrelevant. Even more astonishing, the City and the *amicus curiae* are equally dismissive of POST's authority to establish the minimum guidelines for "promulgation" despite explicit language contained within the legislative history of Vehicle Code section 17004.7 and Penal Code section 13519.8. Ultimately, their unsupported positions can be easily refuted simply by analyzing the language of the statute and understanding the intent behind the inclusion of the "promulgation" requirement which was added to Subsection (b) of Vehicle Code section 17004.7 and enacted into law in 2007.

II. ARGUMENT

A. THE ADMINISTRATIVE BURDENS ARE OVERSTATED BECAUSE THE IMMUNITY AVAILABLE TO PUBLIC ENTITIES UNDER VEHICLE CODE SECTION 17004.7 IS DISCRETIONARY.

Nothing in Vehicle Code section 17004.7 requires public agencies to take on the administrative "burdens" the City and the *amicus curiae* claim that exist. In fact, Vehicle Code section 17004.7(a) specifically states, "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***." (Veh. Code., § 17004.7(a).) (emphasis added).

If a public agency feels that the administrative costs and burdens of having all of their peace officers certify in writing that they have received, read, and understand the policy are too high, they are not required to abide by this statute because the statute explicitly states it is discretionary. Presumably, the legislature considered that certain public entities and law enforcement agencies may not have the means or the resources to meet the requirements of this statute and decided to make the statute discretionary for them to follow. Moreover, the legislature likely knew that metropolitan cities such as San Francisco and Los Angeles have large law enforcement agencies when it decided to amend the law only 11 years ago. As a consequence, the legislature included the second provision in 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." (See Veh. Code., § 17004.7(b)(2).) (emphasis added). Here, the legislature logically concluded that public agencies should not be penalized with otherwise relevant evidence of ***liability*** if they chose not to abide by Vehicle Code section 17004.7 because the statute is discretionary.

Moreover, concerns regarding the requirements of annual pursuit training and certification are more overblown than what is portrayed in the *amicus curiae* briefs. As discussed on the Opening Brief on the Merits, all officers need only train and certify in writing as to that training every calendar year. (See Opening Brief on the Merits Sec. V.B.1 at pp. 17-22.) Depending on the date of a particular incident, a public agency may have more than one year to become compliant with Vehicle Code section 17004.7 given the legislature's use of the term "annual." (See Opening Brief on the Merits Sec. V.B.1 at p. 21.) All that is required of the public agency is to retain the written certifications of their peace officers if the public agency needs to demonstrate it promulgated its pursuit policy under Vehicle Code section 17004.7.

Based upon the legislative history of the statute, the immunity provided under Vehicle Code section 17004.7(b)(1) was designed to encourage public law enforcement agencies, similar to "a carrot on a stick," to "adopt" and "promulgate" a pursuit policy to all of their peace officers based upon POST's minimum guidelines in order to address public safety concerns relating to pursuits. (See Opening Brief on the Merits Sec. V.B.2 at pp. 22-27.) Ultimately, the legislature left it up to the individual public entities and the law enforcement agencies to determine if they want to take advantage of this discretionary immunity. Should they choose to comply with the requirements of the statute then they would reap the benefits of civil immunity under the statute.

B. IMMUNITIES APPLICABLE TO PUBLIC EMPLOYEES DO NOT EXTEND TO PUBLIC AGENCIES.

Any attempt to characterize the immunity afforded to ***public agencies*** under Vehicle Code section 17004.7(b)(1) as being an extension of individual immunities provided to ***public employees*** under Vehicle Code section 17004 and Government Code section 820.2 is simply a misstatement of the law.

Vehicle Code 17001 specifically imposes liability upon a ***public entity*** when death or injury to person or property is proximately caused by a negligent or wrongful act or omission in the operation of any motor vehicle by an employee of the public entity acting within the scope of his or her employment. (See Veh. Code., § 17001.) Such a liability statute does not exist for individual peace officers and public employees as they are agents of a public entity. Presumably, the legislature did not want peace officers or public employees to be held personally liable for potentially negligent acts so as to not second guess the actions of these individuals who often times engaged in discretionary acts on behalf of their principals. Accordingly, peace officers, as with all public employees, are granted automatic immunity from civil liability under Vehicle Code section 17004 and Government Code section 820.2 regardless of whether their conduct was negligent at the time of the incident. (See Opening Brief on the Merits Sec. V.A.

at pp. 12-14.) However, public entities, as principals, are not afforded the same protection because they are vicariously responsible for training and certifying their agents or employees and often times require them to engage in certain discretionary acts within the scope of their employment. As a consequence, the immunity available to ***public agencies*** under Vehicle Code section 17004.7(b)(1) is not automatic and as sweeping as those immunities available to public employees and peace officers.

C. NOTHING CONTAINED IN VEHICLE CODE SECTION 17004.7(b)(2) SUGGESTS ANYTHING LESS THAN COMPLETE COMPLIANCE WITH THE "PROMULGATION" REQUIREMENT IS ACCEPTABLE FOR IMMUNITY TO APPLY TO A PUBLIC AGENCY.

An analysis of Section 17004.7(b)(2) is guided by settled principles of statutory interpretation. (*Morgan v. Beaumont Police Department* (2016) 246 Cal.App.4th 144, 151.) The Court's "fundamental task is 'to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. [Citation.] As always, we start with the language of the statute, 'giv[ing] the words their usual and ordinary meaning [citation], while construing them in light of the statute as a whole and the statute's purpose [citation]." (*Id.* citing *Apple Inc. v. Superior Court.* (2013) 56 Cal.4th 128, 135.)

"The statute's words generally provide the most reliable indicator of legislative intent; if they are clear and unambiguous, "[t]here is no need for judicial construction and a court may not indulge in it." [Citation.] Accordingly, "[i]f there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs." (*Id.* citing *Cequel III Communications I, LLC v. Local Agency Formation Com. of Nevada County* (2007) 149 Cal.App.4th 310, 318.)

Subdivision (b)(1), provides: "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." (Veh. Code § 17004.7(b)(1).) (emphasis added).

Based upon the plain language of 17004.7(b)(2) ***"promulgation"*** is a ***mandatory*** and ***absolute*** requirement for public agencies as evidenced by the specific language contained in Subdivision (b)(2). Vehicle Code section 17004.7(b)(2) states, "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." (Veh. Code § 17004.7(b)(2).) (emphasis added).

Here, the legislature intentionally chose to use the terms ***"shall"*** and ***"all"*** in Subdivision (b)(2) to require complete compliance with the promulgation requirement by public agencies who are asserting the immunity contained in Subdivision (b)(1) as a defense. The term ***"shall"*** as used in Subdivision (b)(2) imposes a ***mandatory duty*** on public agencies to demonstrate that they have met the minimum requirements of "promulgation" for immunity to apply to them under Subdivision (b)(1). The legislature's specific use of the terms ***"all"*** or "***all peace officers"*** sets forth an ***absolute*** condition of "promulgation" in order for a public agency to qualify for immunity. The term ***"all"*** like "always, every, none, never, and only" is an ***absolute term*** which requires the complete occurrence or nonoccurrence of an event or circumstance to be applicable in a given situation. Terms like "few, some, sometimes, most, and many" are non-absolute terms which allow for relative gradation of events or circumstances to happen in order to qualify in a given situation.

Applying the basic principles of statutory interpretation, Subdivision (b)(2) is unambiguous in its requirement that public agencies claiming immunity must demonstrate that "***all peace officers*** of the public agency ***certify in writing*** that they have ***received, read, and understand***" the agency's vehicle pursuit policy. (*Morgan,* supra, at p. 154.) (emphasis added.) This clearly is a requirement of complete compliance. Had the legislature meant for only a "few, some, or most" peace officers or the "public agencies" themselves to be able to meet this requirement, the legislature would have simply used the terms "few, some, or most" or "public agency" instead of "all peace officers."

The briefs filed by the City, League, CPCA, CSSA, and the CPOA seem to suggest that the law allows for the application of immunity in situations where only partial compliance with the "promulgation" requirement can be shown by a public agency. As discussed above, nothing in the plain language of the statute supports this position. Moreover, allowing immunity in situations where only partial compliance can be demonstrated would eviscerate the intent of the legislature which is to encourage public agencies to properly train in pursuit and have "all" of their peace officers certify in writing as to that training in the name of public safety. If this Court were to adopt the City and the *amicus curiae's* interpretation of the law, promulgating the policy to as little as one officer would suffice to meet this requirement. Obviously, it was not the intention of legislature for such a ridiculous outcome given the language of statute.

Lastly, adopting the position by the City and the *amicus curiae* will only create more confusion as it relates to the issue of "promulgation." Neither the City nor the *amicus curiae* have defined the level of compliance necessary to meet the plain language of the "promulgation" requirement. Are only a "few" certifications sufficient to meet the statute? Does a public agency need "most" of the peace officers' certifications? Instead, what appears to be clear is that the legislature chose to use the terms ***"all"*** or ***"all peace officers"*** to create a bright-line rule to assist courts in determining whether a given policy was sufficiently promulgated

at a given time. In all likelihood, by drafting the statute as it did, the legislature was hoping to avoid the same confusion which the City and the *amicus curiae* wish to create and perpetuate in order to avoid potential liability in the instant matter and future matters when the immunity clearly does not apply.

D. THE LEGISLATIVE HISTORY OF VEHICLE CODE SECTION 17004.7 AND THE EXPLICIT LANGUAGE OF PENAL CODE SECTION 13519.8 INDICATES THAT POST IS THE GUIDING AUTHORITY ON "PROMULGATION" AS WELL AS PURSUIT TRAINING.

The City's Answer Brief and the *amicus curiae* brief submitted by the League concede that vehicular pursuit ***training*** must comply with POST guidelines in order for the agency to qualify for immunity under Vehicle Code section 17004.7(d). (See Answer Brief on the Merits at pp. 41-42 and Amicus Curiae Brief of the League at pp. 15-16; Veh. Code, § 17004.7(d).) Under Vehicle Code section 17004.7, subdivision (d), "'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***." (Veh. Code, § 17004.7(d).) While read in isolation, Subdivision (d) would seem to indicate that POST is only an authority on training guidelines. However, the City and League blatantly overlooked the legislative intent of Vehicle Code section 17004.7 and the plain language Penal Code Section 13519.8 which explicitly states POST is the authority for establishing minimum guidelines for promulgation as well as training.

First, Senate Bill 719 (SB 719), states, "(2)....This bill,... would express the intent of the Legislature that each law enforcement agency adopt, ***promulgate***, and require regular and periodic training consistent with an agency's specific pursuit policy that, ***at a minimum, complies with the commission's guidelines***. (Sen. Com. on Public Safety, Analysis of Sen. Bill No. 719 (2005–2006 Reg. Sess.) April 26, 2005, p. 3, italics added.)(emphasis added.)

Secondly, Penal Code Section 13519.8(a)(1) provides, "***The commission*** shall implement a course or courses of instruction for the regular and periodic training of law enforcement officers in the handling of high-speed vehicle pursuits and ***shall also develop uniform, minimum guidelines for*** adoption and ***promulgation by California law enforcement agencies for response to high-speed vehicle pursuits...These guidelines shall be a resource for each agency executive*** to use in the creation of a specific pursuit policy that the ***agency is encouraged to*** adopt and ***promulgate***, and that reflects the needs of the agency, the jurisdiction it serves, and the law. (Penal Code Section 13519.8(a)(1).) (emphasis added.) Moreover, subdivision (e) states, "***It is the intent of the Legislature*** that ***each law enforcement agency*** adopt, ***promulgate, and require regular and periodic training consistent*** with an agency's specific pursuit policy that, ***at a minimum, complies with the guidelines developed under subdivisions (a)*** and (b). (Penal Code Section 13519.8(e).)(emphasis added.) In sum, if anyone is mischaracterizing the law and the relevance of POST's authority as it relates to "promulgation" in this matter it is the City and the League, not Ramirez. Both the City and the League seems to undermine the authority POST which is comprised of representatives from more than 120 law enforcement agencies who contributed to the development of their guidelines. (See Opening Brief on the Merits Sec. V.C. at pp. 28-30.) If the City will not follow the minimum guidelines established by 120 law enforcement agencies and the legislature, then it fails to see the benefits to public safety training and gives no respect to the rule of law which it is charged to enforce.

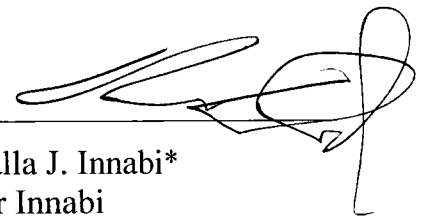
III.

CONCLUSION

For the foregoing reasons, Plaintiff and Appellant Irma Ramirez respectfully requests that this Court disregard the *amicus curiae* briefs filed by League, CPCA, CSSA, and the CPOA and rule on the arguments presented by the interested parties.

Respectfully submitted,

DATED: April 6, 2018

By 

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CERTIFICATE OF COMPLIANCE

I, Abdalla J. Innabi, declare that:

I am an attorney in the law firm of Innabi Law Group, APC, which represents Plaintiff and Appellant Irma Ramirez, individually and on behalf of the Estate of Mark Gamar.

This Answer Brief to the Amicus Curiae Briefs submitted by The League of California Cities, California Police Chiefs Association, California State Sheriffs' Association, and California Peace Officers' Association was produced with a computer using Microsoft Word. It is proportionately spaced in 13-point Times Roman typeface. The brief contains 3,016 words including footnotes, excluding the tables and this certificate.

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

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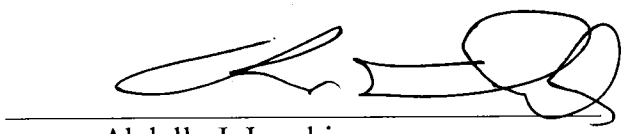

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PROOF OF SERVICE

CASE NAME: **Ramirez v. City of Gardena**
SUPREME COURT CASE NUMBER: **S244549**
COURT OF APPEAL CASE NUMBER: **B279873**
SUPERIOR COURT CASE NUMBER: **BC609508**

I, the undersigned, declare as follows:

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2. My business address is 2500 E. Colorado Blvd., Suite 230, Pasadena, California 91107.

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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.

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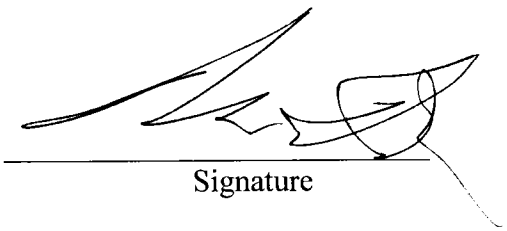

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