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

OPENING BRIEF ON THE MERITS

Abdalla J. Innabi* (S.B. No. 172302)
Amer Innabi (S.B. No. 225413)
Innabi Law Group, APC
2500 E. Colorado Blvd., Suite 230
Pasadena, CA 91107
T: (626) 395-9555
F: (626) 395-9444
abdalla@innabi-lg.com
amer@innabi-lg.com

Attorneys for Plaintiff and Appellant IRMA RAMIREZ

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

State

STATUTES

LEGISLATIVE HISTORY

OTHER SECONDARY SOURCES

I. THE ISSUE PRESENTED

This case presents the following issue as framed by the Court:

1. Is the immunity provided by Vehicle Code section[1] 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?

Based upon the plain language of Section 17004.7, its legislative history and intent, and the minimum guidelines set forth by the Department of Justice's "Commission on Peace Officer Standards and Training" ("POST"), the answer to the above issue is a resounding: "Yes!"

II. INTRODUCTION

The limited issue raised in the instant matter is important in that it addresses public safety concerns for California's citizens and their ability to seek legal redress for incidents of personal injury or death caused in the course of a vehicular police pursuit. Moreover, the instant matter will reconcile a recent split in authority created by the Court of Appeal in the instant matter concerning the meaning of "promulgation" and the sufficiency of evidence necessary to establish compliance with that requirement under Section 17004.7(b). Consequently, the above issue should be resolved by this Court to protect the public's safety, including the peace officers of this State, and effectuate the legislature's stated desire to encourage the implementation of pursuit policy training and certification while providing an avenue for redress to victims and their families injured as a result of a vehicular pursuit.

Based on the plain language, legislative history, and stated purpose of Section 17004.7, and the authority and guidelines extended to POST under this same section, this Court must find that when "all peace officers" of a public agency fail to "certify in writing" that they have "received, read, and understand" the agency's vehicular pursuit policy, the agency is not immune from civil liability

[1] All references to "Section" shall refer to the Vehicle Code.

for incidents of injury or death caused in the course of a police pursuit and may be liable under Vehicle Code section 17001.

III. PROCEDURAL HISTORY

On February 5, 2016, Plaintiff and Appellant Irma Ramirez ("Ramirez"), the mother of Mark Gamar, filed a lawsuit asserting a wrongful death action, against Defendant and Respondent the City of Gardena (the "City") based on the Vehicle and Government Codes, for the death of her son. [1 AA 2-14.].

On July 29, 2016, the City filed a motion for summary judgment or, in the alternative, a motion for summary adjudication on the basis that: (1) it is civilly immune under California Vehicle Code section 17004.7 and (2) it was not negligent because Officer Michael Nguyen's conduct was reasonable under the circumstances as a matter of law. [1 AA 31-72.].

Section 17004.7(b)(1) sets forth a narrowly circumscribed immunity, which is available to a public agency if it demonstrates that it has adopted and promulgated a written pursuit policy where all peace officers certify in writing that that have received, read, and understand the policy at the time of a particular incident.

On November 15, 2016, the trial court granted the City's motion for summary judgment, finding as a matter of law that the City was civilly immune under Section 17004.7 despite finding that there were triable issues of fact as to whether Officer Michael Nguyen's actions were reasonable under the circumstances. [5 AA 1165-1201.]

Judgment was eventually entered by the trial court on December 8, 2016 and Ramirez filed her Notice of Appeal on January 3, 2017. [5 AA 1240-1246.]

Ultimately, the Court of Appeal filed its published opinion on August 23, 2017, affirming summary judgment in favor of the City, finding that the City provided sufficient evidence to establish that it "adopted" and "promulgated" a written pursuit policy within the meaning of Section 17004.7.

Consequently, Ramirez filed a Petition for Review with the Supreme Court of California on September 26, 2017. Ultimately, the Supreme Court granted Ramirez' Petition for Review on November 1, 2017 limiting the issue to the one referenced above concerning "promulgation."

IV. STATEMENT OF FACTS

A. THE INCIDENT

This action relates to a two car collision following a brief vehicular pursuit which occurred on February 15, 2015 at approximately 11:17 p.m., Sunday evening, in a commercial section of the City of Gardena during a time when there was virtually no traffic on the streets. [1 AA 2-19, 3 AA 673-675, 723-729, 809-814.]. At the time, Mark Gamar ("Gamar") was a passenger in a small, 1984 Toyota pick-up truck being driven by Eduardo Arellano ("Arellano") when a marked City of Gardena Police Ford Explorer SUV (Vehicle P-13), driven by Officer Michael Nguyen ("Officer Nguyen") of the Gardena Police Department ("GPD"), intentionally rammed into the rear quarter panel of the pick-up truck in an attempt to conduct a PIT[2] maneuver. [1 AA 2-19, 3 AA 673-675, 723-729, 809-814.]. The City contends that Arellano was fleeing from the scene of an armed robbery that originated in the City of Hawthorne, allegedly involving Gamar, in which two (2) cellular phones were stolen prior to the collision. [1 AA 46-47, 76, 126, 134.]

During the *one minute and 10 second* pursuit, Officer Nguyen attempted a PIT maneuver at *nearly 50 mph* on the pick-up truck which was traveling at approximately 40 mph while both vehicles headed westbound on Rosecrans Avenue. [3 AA 673-675, 723-726, 809-814.]. That particular stretch of Rosecrans Avenue is comprised of three lanes in either direction, a painted center

---

[2] "Pursuit Intervention Technique" or "Pursuit Immobilization Technique" ("PIT") refers to a driving maneuver utilized by some law enforcement agencies to end pursuits where a police officer's front bumper gently touches a fleeing vehicle's rear bumper while matching the fleeing vehicles speed and making a quick quarter turn of the wheel towards it in order to safely spin out the fleeing vehicle to a stop.

median, and is located in an *industrial section* of Gardena, approximately two city blocks east of the Northbound 110 Freeway off-ramp and on-ramps which are located directly adjacent to one another. As a result of the PIT maneuver, the pick-up truck lost control and collided, passenger side, into a street signal pole located on the southeastern corner of Rosecrans Avenue and the Northbound 110 freeway off-ramp contributing to Gamar's eventual death on February 17, 2015. [1 AA 2-19, 3 AA 673-675, 723-726, 809-814.].

From the outset of the vehicular pursuit, Officer Nguyen was intent upon conducting a PIT maneuver without considering any safer alternative driving or legal intervention tactics. [3 AA 673-675, 726-727, 791-804, 809-814.]. An investigation into the matter by the Los Angeles Sheriff's Department revealed that Officer Nguyen formulated his intent to conduct a PIT maneuver as he turned westbound onto Rosecrans Avenue from South Figueroa Street. [3 AA 726-729, 791-804, 809-814.]. During an interview Officer Nguyen admitted that as he made that turn he wanted to conduct a PIT maneuver, but chose not to at the time before the pursuit ended in a collision approximately one block away by the Northbound 110 freeway off-ramp and on-ramps. [3 AA 726-729, 791-804, 809-814.]. Less than a minute into the pursuit Officer Nguyen decided, *without watch commander approval or request for air support*, to initiate the PIT maneuver *from an opposing lane of traffic* knowing that a PIT maneuver *over the speed of 35 mph* was extremely dangerous and *without ever observing a weapon from the fleeing vehicle or encountering any egregious traffic violations* which threatened the public's safety. [3 AA 673-675, 726-727, 791-804, 809-814.]. Officer Nguyen's decision to conduct the PIT maneuver only appears to have occurred after Gardena Police Officer Michael Balzano ("Officer Balzano") confirmed with Officer Nguyen that there were "enough [patrol] vehicles [behind him] to initiate a PIT maneuver." [3 AA 728, 791-804, 809-814.].

Following the collision, Officer Nguyen claimed to have initiated the PIT maneuver at that specific time because he believed the "pick-up truck was

beginning to enter the [Northbound 110 freeway] off ramp" despite the fact that dash cam video showed *Arellano never applied the brakes or slowed down to initiate the left turn towards the off-ramp,* which was a significant distance from the freeway on and off ramps. [3 AA 728-729, 791-804, 809-814.]. Video footage further revealed that Arellano steered slightly to the left for a split second to block Officer Nguyen's fast approaching vehicle coming from the left from an opposing lane of traffic. [3 AA 726-729, 791-804, 809-814.]. Officer Balzano later confirmed in an interview with the Los Angeles Sheriff's Department that it appeared to him that the pick-up truck moved left simply as a reaction to Officer Nguyen's vehicular move to the left in attempt to "cut off" Officer Nguyen's fast approaching vehicle. [3 AA 726-729, 791-804, 809-814.]. Ultimately, this testimony and footage from the dash cam videos from the pursuing police vehicles casts serious doubt as to the veracity of Officer's Nguyen's claimed justification for conducting the PIT maneuver at the time he chose to execute it. [3 AA 673-675, 723-729, 791-804, 809-814.].

B. THE CITY'S ATTEMPT TO "PROMULGATE" ITS VEHICULAR PURSUIT POLICY AT THE TIME OF THE INCIDENT.

In an effort to avail itself of the statutory immunity provided under the Vehicle Code, the City filed a declaration concurrently with a motion for summary judgment to attempt to show it properly "promulgated" a pursuit policy to all of its peace officers. Lieutenant Michael Saffell, the custodian of records for the GPD at the time of the incident, stated in his declaration that "he is informed and believes" that *"approximately"* 92 active-duty police officers were employed at the time of the incident and claimed all officers completed certifications for the City's "Pursuit Policy Training" *without actually producing any signed written attestation forms for any of its peace officers after 2010.* [2 AA 335-341, 344-346, 348-349, 356-359, 381-382, 388, 407, 413-415, 417, 477-562, 3AA 677-678, 722-723, 735-736, 778-784, 791-795, 4 AA 883-979.] As part of the City's

motion for summary judgment, the City attached signed "SB 719 Pursuit Policy Training Attestation" forms from only 2009 and 2010 for various officers within the GPD, with none of the names in 2009 actually repeating the following year in 2010. [2 AA 335-341, 344-346, 348-349, 356-359, 381-382, 388, 407, 413-415, 417, 477-562, 3AA 677-678, 722-723, 735-736, 778-784, 791-795, 4 AA 883-979.]

Lt. Vicente Osorio, the GPD's current custodian of records, testified in deposition that after 2010, the City did away with the "SB 719 Pursuit Policy Training Attestation" forms and required its peace officers to sign "roster sheets" proving their attendance in pursuit policy training, with those signed roster sheets later being "*shredded*" after the names of the respective attending officers were entered into a GPD data base by an unknown clerk who the City was unable to identify. [2 AA 335-341, 344-346, 348-349, 356-359, 381-382, 388, 407, 413-415, 417, 477-562, 3AA 677-678, 722-723, 735-736, 778-784, 791-795, 4 AA 883-979.]

Attempting to demonstrate some level of written certification for pursuit training a year prior to the incident in question, the City *produced in response to a discovery request*, a "Course Attendance Report" which was *generated in 2016* after the incident during the course of the instant litigation.[3] The "Course Attendance Report" allegedly represented "new training" provided to the City's peace officers for "Driving (PSP)" between July 1, 2013 and June 30, 2016. [2 AA 335-341, 344-346, 348-349, 356-359, 381-382, 388, 407, 413-415, 417, 477-562, 3AA 677-678, 722-723, 735-736, 778-784, 791-795, 4 AA 883-979.] While the "Course Attendance Report" covered a three (3) year span of time, only one year of training listed training allegedly completed by the City's peace officers in 2014.

---

[3] Ramirez objected to the use of this report because it is inadmissible hearsay evidence which is not exempted as a business or public record given that the report was generated by the City in direct response to a discovery request in 2016 *after* the incident in question and the alleged training and certification that took place in 2014. [3 AA 778-784, 4AA 388, 407, 477-479.]

Ultimately at deposition, Lt. Osorio could not say for certain that all of the City's active-duty peace officers actually acquired updated training in 2014. More importantly, the "Course Attendance Report" did not contain the signatures of any of peace officers certifying that they "received, read, and understood" the agency's pursuit policy." [2 AA 335-341, 344-346, 348-349, 356-359, 381-382, 388, 407, 413-415, 417, 477-562, 3AA 677-678, 722-723, 735-736, 778-784, 791-795, 4 AA 883-979.]

Contrary to Lt. Vicente Osorio's deposition testimony that signed roster sheets were "*shredded*" after the names of attending peace officers were entered into a GPD data base, Lt. Saffell stated in his declaration that GPD was not required to maintain written certifications "prior to 2016" claiming any unproduced records reflecting training and certification "*may have been lost* during [his] Department's transition to a new police station." [2 AA 335-341, 344-346, 348-349, 356-359, 381-382, 388, 407, 413-415, 417, 477-562, 3AA 677-678, 722-723, 735-736, 778-784, 791-795, 4 AA 883-979.] Despite this apparent contradiction, Lt. Saffell declared upon "information and belief" that the applicable vehicle pursuit policy was "regularly" taught to all Gardena police officers and that GPD provided training on an annual basis. [2 AA 335-341, 344-346, 348-349, 356-359, 381-382, 388, 407, 413-415, 417, 477-562, 3AA 677-678, 722-723, 735-736, 778-784, 791-795, 4 AA 883-979.]

V. ARGUMENT

A. LIABILITY FROM INCIDENTS OF PERSONAL INJURY ARISING OUT OF VEHICLE PURSUITS MAY BE BROUGHT AGAINST PUBLIC ENTITIES.

The tort liability of public entities in California is governed by statute. (*Thomas v. City of Richmond* (1995) 9 Cal.4th 1154, 1157.) "*Except as otherwise provided by statute*: [¶](a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." (Gov. Code § 815.) (emphasis added). "Government Code

section 810 et seq., referred to as the California Tort Claims Act of 1963, generally define the liabilities and immunities of public entities and public employees. While the act is the principal source of such liabilities, other statutory sources exist." (*Id.*)

Government Code section 815.2, subdivision (b) states: "*Except as otherwise provided by statute*, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability." (Gov. Code § 815.2(b).) (emphasis added.)

Section 17004 confers broad immunity upon *public employees* responding to emergency calls or in the pursuit of an actual or suspected violator of the law. (See Veh. Code § 17004.) (emphasis added.) Similarly, Government Code section 820.2 provides a broad immunity to public employees for discretionary acts. Government Code section 820.2 sets forth *except as otherwise provided by statute*, a *public employee* is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused. (Gov. Code § 820.2.) (emphasis added.)

One statutory source outside the California Tort Claims Act of 1963 (hereafter Tort Claims Act) is Section 17001, which provides: "A public entity is liable for death or injury to person or property 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 employment*." (*Id.* citing Veh. Code § 17001.) As a consequence of Section 17001, "*a public entity has liability for vehicle pursuits even though the public employee is immune*." (*Colvin v. City of Gardena* (1992) 11 Cal.App.4th 1270, 1276.) (emphasis added.) "Vehicle Code 17001 is not a general liability statute, but one that specifically imposes liability upon a 'public entity.'" (*Thomas*, supra at p. 1159.) Thus, Section 17001 "otherwise provides" for public entity liability and comes within the exception of

Government Code section 815.2, subdivision (b). (*Id.* citing *Brummett v. County of Sacramento* (1978) 21 Cal.3d 880, 885.)

Reading Sections 17001, 17002 and 17004 together, the inescapable conclusion is that the legislature intended to allow public entities, but not individual peace officers, to be held civilly liable for pursuit related injuries sustained by suspects or innocent bystanders.

B. THE PLAIN LANGUAGE AND LEGISLATIVE HISTORY OF SECTION 17004.7(b)(2) REQUIRES THAT "ALL PEACE OFFICERS" OF A PUBLIC AGENCY "CERTIFY IN WRITING" THAT THEY HAVE "RECEIVED, READ, AND UNDERSTAND" THE AGENCY'S VEHICULAR PURSUIT POLICY IN ORDER TO BE GRANTED CIVIL IMMUNITY UNDER SECTION 17004.7(b)(1).

An exception to a public entity's liability permitted under Section 17001 is set forth in Section 17004.7. 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).

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).

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). "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).)

The court in *Morgan v. Beaumont Police Department* (2016) 246 Cal.App.4th 144, resolved the specific issue as to the type of officer certification and training required to have a vehicular pursuit policy deemed properly "promulgated" under Section 17004.7(b) to allow a public entity to avail itself of the immunity provided under this section. In *Morgan*, the family of decedent, Mike Wayne Morgan, brought a negligence action against the City of Beaumont and the Beaumont Police Department for wrongful death of decedent following a head on collision with a fleeing suspect who was being pursued by Beaumont Police Department during a vehicle pursuit that lasted nearly 12 minutes.

The trial court in *Morgan* granted defendants' motion for summary judgment, concluding they were immune from liability pursuant to Section 17004.7. However, the appellate court reversed summary judgment concluding that defendants failed to proffer sufficient evidence to establish as a matter of law that Beaumont Police Department sufficiently "promulgated" its vehicle pursuit policy *at the time of collision* as unambiguously required under section 17004.7. (*Morgan v. Beaumont Police Department* (2016) 246 Cal.App.4th 144, 154-155.) (emphasis added). Applying the principles of statutory interpretation, the *Morgan* Court 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.*)

In *Morgan*, the Police Commander provided a declaration that its peace officers could directly access the agency's pursuit policy through the "Lexipol

service"[4] or through the "department shared drive" and electronically, through individual work e-mail accounts, acknowledge "receipt" of the pursuit policy instead of certifying in writing that all officers "received, read, and under[stood]" the policy. (*Id.* at pp. 162-163.) Further, the Police Commander admitted in his declaration that peace officer e-mails acknowledging mere "receipt" of the policy were not kept by the department. Assuming, without deciding, that an e-mail acknowledgement satisfies the "writing" certification requirement in subdivision (b)(2) of section 17004.7, the court concluded that the record is devoid of evidence showing that each peace officer in fact acknowledged he or she "received, read, and under[stood]" the policy. (*Id.*) Ultimately, the court held that Section 17004.7(b)(2) required more than mere "receipt" of the policy in order for immunity to apply.

In sum, the *Morgan* court found that the Beaumont Police Department did not properly "promulgate" its vehicle pursuit policy, thus the city and police department were not entitled to statutory vehicle pursuit immunity, even if the department disseminated the policy to all of its officers within the department and had in place a policy that required its officers to review and acknowledge any policy disseminated, where the officers used e-mail to acknowledge mere "receipt" of the policy instead of certifying in writing that they received, read, and understood the policy. (*Id.*)

Much like the police department in *Morgan*, the City in the instant case failed to properly "promulgate" its pursuit policy to *all* of its peace officers based upon the both plain language and legislative history of Section 17004.7 and the guidelines of the Commission on Peace Officer Standards and Training (POST). The City failed to produce a single certification of attestation form from any of its peace officers *at the time of the collision.* [2 AA 335-341, 344-346, 348-349, 356-

---

[4] Lexipol is known as America's leading provider of defensible policies and training for public safety organizations, delivering their services through a unique, web-based development system. Lexipol also offers state-specific policy manuals, regular policy updates and daily scenario based training against policy.

359, 381-382, 388, 407, 413-415, 417, 477-562, 3AA 677-678, 722-723, 735-736, 778-784, 791-795, 4 AA 883-979.]. Instead, the City produced a self-serving declaration from a single peace officer and a document generated *after* the collision in response to a discovery request to attempt to demonstrate the necessary certification required under Section 17004.7(b), because the original course attendance "roster sheets" were allegedly "lost" or "destroyed." While it is questionable whether any "roster sheets" ever existed, what is clear from the record is that the City is uncertain whether all of its peace officers took the annual police pursuit course and it did not produce any writings *at the time of the collision* where all peace officers certified they have "received, read, and understood" the pursuit policy.

1. The Plain Language of Section 17004.7(b)(2).

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.)

"Nonetheless, 'the "plain meaning" rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute. The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible. [Citation.]'" "If a statute is susceptible to more than one reasonable interpretation, the court may consider the statute's purpose, the evils to be remedied, the legislative history, public policy, and contemporaneous administrative construction." (*Id.* citing *Nolan v. City of Anaheim* (2004) 33 Cal.4th 335, 340.) In addition, the court may consider the consequences that will flow from a particular interpretation." (*Id.* citing *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387.)

Although Section 17004.7 does not define the word "adopt," subdivision (b)(2) defines the word "promulgate" 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 impose *liability* on an individual officer or a public entity." (Veh. Code § 17004.7(b)(2).) (emphasis added).

Applying the basic principles of statutory interpretation, *Morgan* properly concluded that the promulgation language of section 17004.7, subdivision (b)(2) is unambiguous in its requirement that public agencies claiming immunity must prove 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.) [2 AA 335-341, 344-346, 348-349, 356-359, 381-382, 388, 407, 413-415, 417, 477-562, 3AA 677-678, 722-723, 735-736, 778-784, 791-795, 4 AA 883-979.] One can only conclude that "promulgation" is achieved when "all peace officers," not some peace officers or public agency

itself, "certify in writing" that they have "received, read, and understand the policy" on an "annual basis." Had the legislature meant for some peace officers or public agencies themselves to be able to meet this certification requirement on their own, the legislature would have simply used the terms "some peace officers" or "public agency" instead of "all peace officers." Rather, the legislature specifically used the terms "all peace officers" to show that public agencies must retain POST equivalent attestation forms for pursuit policy training of all of their peace officers to be allowed to avail themselves of the immunity granted under Section 17004.7(b)(1).

The City and the Court of Appeal clearly confused the legal concepts of "liability" and "immunity." Although subdivision (b)(2) of Section 17004.7 expressly provides *liability* cannot be imposed on an officer or a 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, at p. 160.) (emphasis added).

The City will also argues that that Section 17004.7(b)(2) should be interpreted to mean that complete compliance of "all peace officers" is not required despite the obvious plain language of the statute because it would be onerous to public law enforcement agencies and create an undue burden to maintain such records. This interpretation belies Section 17004.7(b)(2). While section 17004.7(b)(2) may excuse a department from liability where one officer fails to sign a certification, it does not grant immunity where an officer fails to certify that he or she received, read and understood the policy. In other words, liability and immunity are two different legal concepts. Per the statute, an officer's failure to sign a certification may not be used to demonstrate negligence on the part of an officer or the department. But this failure is still grounds to deny immunity to the police department.

Similarly, the City will likely take the position that public agencies will be deprived of the immunity under Section 17004.7 "through no fault of its own." The City has cited to the last sentence of Section 17004.7(b)(2) for the proposition that "the failure of an individual officer to execute a written attestation does in fact operate to '*impose liability*' on a public agency" making the public entity not immune. The Court of Appeal also cited to this sentence in order to demonstrate that the retention of signed attestation forms for all peace officers by a public agency is not a mandatory requirement of Section 17004.7(b)(2). In doing so the Court of Appeal reasoned that, "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 the incident occurs." See *Ramirez v. City of Gardena* (2017) 14 Cal.App.5th 811, 823.

The City has mentioned routine employment events such as vacations, sabbaticals, family or medical leave, military or jury duty and new hires as situations it could not anticipate or control where pursuit training could have been missed or overlooked by it. Such a position is preposterous. Obviously, such employment events are typical for all employers and should always be anticipated as time off for whatever reason must be requested and approved in advance. Ultimately, 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.

The City and Court of Appeal's concerns and interpretations of law are completely confused and baseless. A holding consistent with *Morgan* would alleviate any concerns relating to the loss of immunity due to the potential of having a single noncompliant peace officer. *Morgan* held that the certification required by subdivision (b)(2) of section 17004.7 must relate to the same policy that is in effect *at the time of the collision. Morgan,* supra, at pp. 154-155.) (emphasis added). Since "regular and periodic training" under subsection (d)