

No. S244549

SUPREME COURT  
**FILED**

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

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IRMA RAMIREZ, Individually and on behalf of  
the Estate of Mark Gamar,  
*Plaintiff and Petitioner*

---

Deputy

v.

CITY OF GARDENA,  
*Defendant and Respondent.*

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**ANSWER BRIEF ON THE MERITS**

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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,<sup>1</sup> 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:<sup>2</sup> 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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<sup>1</sup> 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.

<sup>2</sup> 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.<sup>3</sup> [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

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<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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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<sup>4</sup>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).]

<sup>5</sup>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.<sup>6</sup> 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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<sup>6</sup> 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<sup>7</sup> 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

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<sup>7</sup> 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.<sup>8</sup> 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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<sup>8</sup> The 2005 amendment became effective on January 1, 2007.