

FEB 20 2018

Jorge Navarrete Clerk

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

IRMA RAMIREZ et al.,

Plaintiff and Appellant,

v.

CITY OF GARDENA,

Defendant and Respondent.

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Deputy

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

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REPLY BRIEF ON THE MERITS

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## I. INTRODUCTION

Defendant and Respondent the City of Gardena (the “City”) takes the position in its “Answer Brief on the Merits” that public agencies are immune from civil liability under Vehicle Code section 17004.7 so long as they “require” all of their peace officers to certify in writing they have received, read, and understand their vehicular pursuit policy without actually having to demonstrate compliance with the “promulgation” requirement delineated in this statute. The City further claims because this statute “requires” public agencies, not the individual peace officers, to demonstrate promulgation of the agency’s vehicular pursuit policy, the City has met its burden under this statute by having two peace officers “vouch” on behalf of the entire police department that all peace officers certified in writing they received, read, and understand the agency’s vehicular pursuit policy at the time of the incident. Contrary to the City’s strained legal reasoning, the plain language and intent of Section 17004.7 and the minimum guidelines set forth by the Commission on Peace Officer Standards and Training (“POST”), do not support the City’s position.

While Plaintiff and Appellant Irma Ramirez (“Ramirez”) agrees that public agencies bear the burden of establishing whether the promulgation “requirement” was met, Ramirez strongly disagrees that simply requiring a certification process is sufficient to provide the City with immunity in the instant matter. Moreover, it is Ramirez’s position that the City failed to proffer sufficient written evidence to demonstrate that all of its peace officers were actually certified at the time of the incident.

Based on the language, history, and purpose of Vehicle Code section 17004.7 and all applicable authority contained within the Vehicle and Penal Codes and authority bestowed to POST, this Court should find that immunity provided under Vehicle Code section 17004.7 is only available to those public agencies which sufficiently demonstrate that all peace officers of that agency certified in writing they have received, read, and understand the agency’s vehicular pursuit

policy at the time of the incident. Given that the City failed to meet its burden, Ramirez respectfully requests that this Court reverse judgment and remand the matter for trial on the merits.

## II. ARGUMENT

### A. THE CITY BEARS THE BURDEN OF PRODUCTION AND PERSUASION TO SHOW THAT IT MET THE “PROMULGATION” REQUIREMENT DELINEATED UNDER VEHICLE CODE SECTION 17004.7(b)(2).

Governmental immunity under Vehicle Code section 17004.7 is an affirmative defense. (*City of Emeryville v. Superior Court* (1991) 2 Cal.App.4th 21, 23.) The defendant has the initial burden to show that such a defense applies. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850–851.) A burden of production entails only the presentation of “evidence.” (*Id.*, Evid. Code, § 110.) A burden of persuasion, however, entails the “establish[ment]” through such evidence of a “requisite degree of belief.” (*Id.*, Evid. Code, § 115.) Once the moving party does so, the burden of production shifts to the opposing party to show the existence of disputed material facts. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar*, at pp. 850–851.) The parties must meet their respective burdens by providing admissible evidence. (Code Civ. Proc., § 437c, subd. (d); *Jambazian v. Borden* (1994) 25 Cal.App.4th 836, 846.)

Vehicle Code section 17004.7(b)(1) states, “*A public agency* employing peace officers that adopts *and promulgates* a written policy on,....., vehicular pursuits...is immune from liability from civil damages...” (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).

Here, Ramirez is in agreement with the City that public agencies, not the peace officers, bear the burden of production and persuasion to show they have met the promulgation requirement under Vehicle Code section 17004.7(b)(2) if they wish to assert the immunity provided under Vehicle Code section 17004.7(b)(1). Clearly, the plain language of the statute places the burden on the “public agencies” to demonstrate they have “adopted and promulgated” a written policy on vehicular pursuits to be granted civil immunity. Accordingly, public agencies bear the burden of *collecting, retaining and producing* as “evidence” of a “requisite degree of belief” from *all* peace officers *writings certifying* that they received, read, and understand the agency’s vehicular pursuit policy in the event an agency wishes to assert the affirmative defense available under Vehicle Code section 17004.7(b)(1).

**B. THE CITY IS INCORRECT IN ITS POSITION THAT PUBLIC AGENCIES ONLY BEAR THE BURDEN OF PROVING THEY HAD A CERTIFICATION REQUIREMENT IN PLACE AT THE TIME OF THE INCIDENT RATHER THAN ACTUALLY DEMONSTRATING COMPLIANCE WITH THAT WRITTEN CERTIFICATION REQUIREMENT BY ALL PEACE OFFICERS UNDER VEHICLE CODE SECTION 17004.7(b)(2).**

Unquestionably, the legislative purpose of Vehicle Code section 17004.7 since its amendment in 2007 seeks to encourage public law enforcement agencies to adopt written vehicular pursuit policies, have those policies implemented through annual training, and ensure compliance with those policies by all peace officers through a written certification process that can be proven by the public agency. Prior to 2007, “if the agency adopts a pursuit policy which meets the statutory requirements, then immunity results.” (*Morgan v. Beaumont Police Department* (2016) 246 Cal.App.4th 144, 155 citing *Nguyen v. City of Westminster* (2002) 103 Cal.App.4th 1161, 1167.) The “extent to which the policy was implemented in general and was followed in the particular pursuit is irrelevant.” (*Id.*) Ultimately, the legislature felt the law was flawed and led to

unintended results. As a result, the legislature decided in 2007 to “add teeth” to Vehicle Code section 17004.7 by requiring public agencies to “*implement the policy through training or other means*” to meet what is now known as the “promulgation” requirement of the statute. (See *Morgan*, supra, at pp. 155-156.) (emphasis added.) It can safely be concluded based upon this change in the law that the legislature found that merely having a vehicular pursuit policy without having any actual assurances of policy implementation and compliance through proper training and written certification is only as useful as the paper those pursuit policies were written on by the agency in question.

It is the City’s position that simply having a certification process without a written showing of compliance is sufficient for immunity to apply in this instance. The City’s position is based on the statute’s use of the word “requirement” contained within Vehicle Code section 17004.7(b)(2). Here, the City wants this Court to read the statute and the term “requirement” in a vacuum without any reference to the rest of the section that requires public agencies to produce *writings* that demonstrate *all peace officers* of the public agency have *certified that they received, read, and understand* the policy. (See Veh. Code., § 17004.7(b)(2).) By not producing any written certifications at the time of the incident, the City has entirely failed to meet both its burdens of production and persuasion.

Moreover, the evidence proffered by the City to demonstrate written certification of all peace officers is insufficient and far from being credible. Lieutenant Vicente Osorio, the City’s current custodian of records, testified in deposition that after 2010, the City did away with the “SB 719 Pursuit Policy Training Attestation” forms (See Exhibit “B” of Appellant’s Opening Brief on the Merits), the certification forms recommended by POST, and required its peace officers to sign “roster sheets” proving their attendance in pursuit policy training meetings. However, Lt. Osorio testified that those signed roster sheets were later “*shredded*” after the names of the respective attending officers were allegedly

entered into the City's 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 for the 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* well after the incident and during the course of the instant litigation. 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" supposedly 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.

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 the City's data base, Lieutenant Michael Saffell, the custodian of records for the GPD at the time of the incident, stated in his declaration that the City 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.]

Simply put, the City’s own proffered “evidence” is not credible and does not provide a “requisite degree of belief.” (*Aguilar, supra*, at pp. 850–851; Evid. Code, §§ 110 and 115.) The “roster sheets” cannot be both affirmatively destroyed and unintentionally lost. Logically, it can be either or neither scenario, but it cannot be both as something that is destroyed cannot be unintentionally lost at the same time.

### III. CONCLUSION

For the forgoing reasons, Plaintiff and Appellant Irma Ramirez respectfully requests that this Court reverse judgment and remand the matter for trial.

Respectfully submitted,

DATED: February 16, 2018

By \_\_\_\_\_/s/\_\_\_\_\_

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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 Reply Brief on the Merits was produced with a computer using Microsoft Word. It is proportionately spaced in 13-point Times Roman typeface. The brief contains 2,018 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.

Executed on February 16, 2018 at Pasadena, California.

\_\_\_\_\_  
/s/  
Abdalla J. Innabi

**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:

1. At the time of service, I was at least 18 years of age and not a party to this legal action. I am a Citizen of the United States and resident of the County of Los Angeles where the within-mentioned service occurred.

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

3. On February 16, 2018, I served the **REPLY BRIEF ON THE MERITS** by overnight courier or personal service as follows: I enclosed a copy in separate envelopes, with postage fully prepaid, addressed to each individual addressee named below, and Federal Express picked up the envelopes in Pasadena, California, for delivery as follows:

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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.

Date: February 16, 2018

\_\_\_\_\_  
Abdalla Innabi  
Print

\_\_\_\_\_  
/s/  
Signature