Supreme Court Case No.: S152360

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

ALEXANDRA VAN HORN, *Plaintiff and Respondent,* v. ANTHONY GLEN WATSON, *Defendant and Appellant* LISA TORTI, *Defendant and Respondent.*	CASE NO. B188076 (Lead) (Los Angeles County Superior Court Case No. PC 034945)
ALEXANDRA VAN HORN, *Plaintiff and Appellant,* v. ANTHONY GLEN WATSON, et al., *Defendants and Respondents.*	CASE NO. B189254

ANSWER BRIEF ON THE MERITS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES (cont.)

Page

STATUTES

TABLE OF AUTHORITIES (cont.)

Page

MISCELLANEOUS AUTHORITIES

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ANSWER BRIEF ON THE MERITS

INTRODUCTION

This Court has asked whether the immunity provided by Health and Safety Code section 1799.102 ("Section 1799.102") for any person who "renders emergency care at the scene of an emergency" applies to a person who removed someone from a wrecked car because she feared it would burst into flames.

If the person in the Court's hypothetical were sued, she would be entitled to the protection of Judicial Council of California, Civil Jury Instructions ("CACI"), Instruction No. 450, titled "Good Samaritan." CACI 450, is based on long-standing common law principles enounced in Section 324A of the Restatement 2d of Torts and this Court's decision in *Williams v. State of California.*[1] Jury Instruction No. 450 states:

> Defendant claims that she is not responsible for Plaintiff's harm because she was voluntarily trying to protect Plaintiff from harm. If you decide that Defendant was negligent, she is not responsible unless Plaintiff proves both of the following:
>
> 1. (a) That Defendant's failure to use reasonable care added to the risk of harm; or
>
> (b) That Defendant's conduct caused Plaintiff to rely on her protection; and
>
> 2. That the additional risk/reliance resulted in harm to Plaintiff.[2]

The person in the Court's scenario would also be entitled to Jury Instruction No. 452 titled "Sudden Emergency" which articulates the "doctrine of imminent peril." Jury Instruction No. 452 states:

> Defendant claims that she is not negligent because she acted with reasonable care in an emergency situation. Defendant is not negligent if she proves all of the following:

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[1] (1983) 34 Cal. 3d. 18.

[2] Amended August 31, 2007.

1. That there was a sudden and unexpected emergency situation in which someone was in actual or apparent danger of immediate injury;

2. That Defendant did not cause the emergency; and

3. That Defendant acted as a reasonably careful person would have acted under similar circumstances, even if it appears later that a different course of action would have been safer.

Thus, the person in the Court's scenario would be entitled to the protection outlined in Jury Instructions 450 and 452. However, Section 1799.102 would not afford immunity to that individual. It certainly would not provide immunity to Respondent Lisa Torti.

Section 1799.102 is part of the Emergency Medical Services System and Prehospital Emergency Medical Care Personnel Act ("the Emergency Medical Services Act"). The Legislature never envisioned that immunity under the Act would apply to someone like Ms. Torti, who had been drinking and acting hysterically.

Nor did the Legislature intend Section 1799.102 immunity to apply to someone like Ms. Torti who *claimed* Mr. Watson's car was going to explode but *knew* the "smoke" from the vehicle was only air bag dust. Ms. Torti did not really believe the car was going to explode because she dropped Plaintiff *within a foot* of the vehicle.

Instead, the Legislature enacted the Emergency Medical Services Act, including 1799.102, because it recognized the need to encourage non-medical professionals to volunteer to provide life-saving medical aid to accident

victims by (1) funding training programs for large numbers of persons to learn "cardiopulmonary resuscitation ('CPR') and lifesaving first aid techniques" and (2) providing those citizens immunity *when they volunteer to use that training* to rescue their fellow citizens. Health & Safety Code section 1797.5 states the purpose of the Act, as follows:

> [I]t is the policy of the State of California that people should be encouraged and **trained** to assist others at the scene of a **medical** emergency. Local governments, agencies and other organizations shall be encouraged to offer training in **cardiopulmonary resuscitation and lifesaving first aid techniques** so that people may be adequately **trained, prepared** and encouraged to assist others immediately.[3]

Thus, the legislature intended to encourage people with special skills and training to volunteer aid to accident victims. Ms. Torti was not "trained and prepared" to provide the care the Legislature intended ("CPR or lifesaving first aid"). She moved an accident victim in a careless and thoughtless manner.

The evidence is clear that Mr. Watson's car was never in danger of exploding or catching fire – and that is not just hindsight. No one at the scene of this accident except Ms. Torti ever thought there was even a remote possibility that the vehicle would catch fire. There was no flame or smoke near the car or any leaking gasoline.

Even Ms. Torti admitted that before she touched Ms. Vanhorn, the smoke she thought she had seen was merely air bag dust. In short, Torti saw nothing that should have compelled her or anyone to move Ms. Vanhorn from the vehicle. Ms. Torti could not have believed the Watson vehicle was going to explode because she made no effort to move Plaintiff out of harm's way.

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[3] Emphasis added.

She dropped Plaintiff right next to the vehicle and right on top of the fallen light pole.

Ms. Torti's actions were therefore not "emergency care" to the accident victim as required by Section 1799.102. Furthermore, the Legislature removed immunity for "moving" an accident victim it its June 10, 1977, amendment of Assembly Bill 1301. The Legislature made the following change:

> [N]o person who in good faith and not for compensation renders emergency care at the scene of an emergency ~~or who transports an injured person for emergency medical treatment~~ shall be liable for any civil damages resulting from any act or omission.[4]

Thus, the Legislature removed immunity for the very act Ms. Torti performed when she removed Plaintiff from the car.

Section 1799.102 does not define what it means to render "emergency care", however, Section 1799.70 of the Act defines "scene of an emergency" to include a situation where there is an *immediate* need for medical attention (such as CPR or lifesaving first aid). There was no "emergency" need to do anything with Plaintiff, including move her from the car before paramedics arrived. Indeed, Ms. Torti did not provide any "medical" services. She simply moved the Plaintiff.

Section 1799.102 cannot be twisted and bent to fit the facts of this case where Ms. Torti's alcohol consumption and hysteria caused her to believe that there was an immediate emergency when in fact there was none. Are we to provide immunity no matter how unnecessary, harmful or outrageous the conduct of the actor?

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[4] June 10, 1977 Amendment to AB 1301 (Ms. Torti's Request for Judicial Notice, Exh. A).

At some point we have to say that immunity cannot cover every person whose irrational, alcohol-fueled and objectively unsupportable belief causes her to further injure an accident victim. The Court should affirm the Court of Appeal's decision to reverse the summary judgment.

STATEMENT OF FACTS

On October 31, 2004, friends and co-workers, Respondent Lisa Torti, Lisa Freed and Plaintiff Alexandra Van Horn were relaxing at Respondent's home. Ms. Torti produced some marijuana and a pipe and Respondent and Plaintiff smoked it.[5] Respondent took two "tokes" [6] of marijuana.[7]

The trio then left with Appellant Anthony Glen Watson and Dion Ofoegbu at 10:00 p.m. for a bar named "Le Cañon." [8] Ms. Torti immediately ordered a beer.[9] She admitted to drinking a couple of beers while at the bar.[10] The extent of her drinking is a subject of some debate. Mr. Watson thought she might have had three beers.[11] She may have also taken a "shot" [12] at the

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[5] Freed Decl. [AA 0449].

[6] www.dictionary.com defines "toke" as slang for "a puff on a marijuana cigarette, or pipe containing hashish or another mind-altering substance."

[7] Plf Depo, p. 44 [AA 0220] and 46 [AA 0437].

[8] Watson Depo, p. 113 [AA 0278].

[9] *Ibid.* p. 117 [AA 0282].

[10] Torti Depo, p. 48 [AA 0603].

[11] Watson Depo, pp. 128-129 [AA 0485-AA 0486].

[12] www.dictionary.com defines "a shot" as slang for "a drink, especially a jigger of liquor."

bar.[13]

The group spent a couple of hours at the bar.[14] They left between 1:15 and 1:50 a.m.[15] Mr. Ofoegbu drove Ms. Torti from the bar and Mr. Watson drove Plaintiff and Ms. Freed.[16] Plaintiff was seated in the front passenger seat.

At the intersection of Topanga Canyon Blvd. and Marilla St., Mr. Watson saw an animal dart into his vehicle's path. He swerved to avoid hitting the animal and lost control of the vehicle. His vehicle struck a light standard while traveling 45 miles per hour.[17]

The impact caused the front air bags to deploy.[18] Mr. Watson could see a little bit of smoke outside of the vehicle *dissipating very quickly*. He could not see where the smoke was coming from.[19] Ms. Torti saw some smoke coming from the *top* of the vehicle.[20]

Ms. Freed, sitting in the back seat, also saw the air bag dust but *no smoke*.[21] Nothing appeared dangerous to her.[22] She had no fear of remaining

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[13] Plf. Depo, p. 55 [AA 0497-AA 0498, AA 0543].

[14] *Ibid.* p. 66 [AA 0438].

[15] Watson Depo, p. 142 [AA 0292].

[16] Ofoegbu Decl., p. 11:10-12 [AA 0480].

[17] Watson Depo, Vol II, pp. 166-167 [AA 0412].

[18] Van Horn Depo, p. 86 [AA 0237].

[19] Watson Depo, p. 186 [AA 0313].

[20] Torti Depo, p. 73:16-17 [AA 0426].

[21] Freed Decl., p. 5 [AA 0451].

[22] *Ibid.*

in the vehicle.[23] Mr. Watson also saw nothing that made him think the vehicle would catch fire.[24]

Because Mr. Watson's vehicle struck a telephone pole not a power pole, there were no downed power lines.[25] There were no sparks.[26] No fluids were leaking from the vehicle.[27] There were no strange smells coming from the car.[28]

There was no evidence Ms. Van Horn tried to leave the Watson vehicle on her own. She was in shock. She was just trying to figure out what was going on.[29] Her seat was not broken by the impact.[30] Her legs did not move in the accident.[31] She could feel her legs while sitting there in the car.[32]

Mr. Ofoegbu and Ms. Torti ran from Mr. Ofoegbu's vehicle to the Watson vehicle to see if the occupants were alright.[33] Mr. Ofoegbu saw

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[23] *Ibid.*

[24] Watson Depo, p. 184 [AA 0311].

[25] Plf Depo, p. 88 [AA 0239].

[26] *Ibid.* [AA 0239].

[27] *Ibid.*, p. 89 [AA 0240]; Ofoegbu Decl. p. 11:15-17 [AA 0479].

[28] Watson Depo, Vol II, p. 181 [AA 0415].

[29] Plf Depo, p. 208 [AA 0262].

[30] *Ibid.*, p. 91 [AA 0242].

[31] *Ibid.*, p. 87 [AA 0238].

[32] *Ibid.*, pp. 89-90 [AA 0240- AA 0241].

[33] Ofoegbu Decl., p. 11:15-16 [AA 0479].

nothing that appeared to him to be dangerous to the passengers in the car.[34]

Mr. Ofoegbu warned Ms. Torti not to touch Plaintiff until the paramedics arrived.[35] Nevertheless, Ms. Torti opened Ms. Van Horn's car door. When she opened up the door, she could see that the smoke she had previously seen was just dust from the air bags.[36] **She therefore could not have, in good faith, felt there was any fear of fire or explosion.**

Instead of leaving Ms. Van Horn in her passenger seat until professional help could arrive, Ms. Torti pulled Plaintiff quickly out of the car by the arm "like a rag doll" and placed her on the ground between the vehicle and the curb.[37] Ms. Torti does not remember how many steps she took Ms. Van Horn from the car.[38] But, she could see the Watson's car next to where she placed Plaintiff on the ground.[39] After placing Ms. Van Horn on the ground, she pulled her by the ankles.[40]

Witnesses state that Ms. Torti literally placed Plaintiff *within one foot* of Mr. Watson's vehicle.[41] Mr. Watson said it was "within inches." [42]

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[34] *Ibid.,* p. 11:16-17 [AA 0479].

[35] *Ibid.,* p. 12:2-6 [AA 0480].

[36] Torti Depo, pp. 95-96 [AA 0430, AA 0609].

[37] Plf Depo, p. 95 [AA 0246, AA 0443]; Torti Depo, p. 10 [AA 0423].

[38] Torti Depo, p. 89 [AA 0607].

[39] *Ibid.,* p. 90 [AA 0429].

[40] Plf Depo, p. 102 [AA 0248].

[41] Watson Depo, Vol II, p. 237 [AA 0420]; Plf Depo, p. 98 [AA 0444]; Lisa Freed Decl., p. 5 [AA 0451].

[42] Watson Depo, Vol II, p. 236:1-3 [AA 0419].

Respondent placed Plaintiff on the ground such that one-half of her body was on the curb and one-half was on the street.

Incredibly, Respondent placed Plaintiff *on the fallen pole* with which the Watson vehicle had collided. Ms. Van Horn frantically told bystanders "I have to get off this pole." [43] But no one moved her.[44] When paramedic Todd Carb arrived at the accident scene, he found Plaintiff partially on the pole. This concerned him because there is often a risk of electrical injury with fallen poles.[45]

Although Ms. Van Horn could feel her legs while sitting in the vehicle, she could not do so while lying on the ground. She described the increased pain when Respondent moved her as "one-hundred fold." [46] Plaintiff was taken by the paramedics to the hospital where she was diagnosed with, among other injuries, a burst fracture of the 12th thoracic vertebra causing bone to extrude into the spinal column.[47] There is testimony in the record that moving an automobile accident victim can increase the risk of spinal cord injury.[48]

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[43] Plf Depo, p. 101 [AA 0444].

[44] *Ibid.*, p. 104 [AA 0250, AA 0445].

[45] Carb Depo, p. 19 [AA 0467].

[46] Plf Depo, p. 99 [AA 0442].

[47] Thompson Decl., p. 27 [AA 0518].

[48] *Ibid.*, p. 34 [AA 0519].

STATEMENT OF THE CASE

On May 25, 2004, Plaintiff filed her Complaint for damages in the Chatsworth branch of the Los Angeles Superior Court.[49] The Complaint named only Mr. Watson as a defendant. On September 20, 2004, Plaintiff amended the pleading to also name Respondent Torti and Mr. Ofuegbu.[50] On August 31, 2005, Plaintiff secured a default judgment against Mr. Ofuegbu.

On June 14, 2005, Mr. Watson filed a Cross-Complaint against Ms. Torti for declaratory relief and comparative indemnity. The Cross-Complaint alleged that Ms. Torti was responsible for some or all of the Plaintiff's damages.[51]

On June 3, 2005, Ms. Torti filed a Cross-Complaint against Mr. Watson for declaratory relief and comparative indemnity. The Cross-Complaint alleged that Mr. Watson was responsible for some or all of the Plaintiff's damages.[52] Both Mr. Watson and Ms. Torti duly filed answers to each other's Cross-Complaints.[53]

On June 13, 2005, Ms. Torti filed a Motion for Summary Judgment on the Complaint.[54] The Motion argued that Health & Safety Code section 1799.102 shielded Respondent from liability for her actions at the accident

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[49] AA 0077-AA 0082.

[50] AA 0085-AA 0089.

[51] Watson Cross-Complaint [AA 0113-AA 0118].

[52] Torti Cross-Complaint [AA 0100-AA 0107].

[53] Torti Answer to Watson Cross-Complaint [AA 0338-AA 0347] and Watson Answer to Torti Cross-Complaint [AA 0119-AA 0123].

[54] Mot. Summ. Judgmt. [AA 0124-AA 0156].

scene.

On October 3, 2005, Mr. Watson filed his Opposition to Ms. Torti's Motion. The Opposition argued that by the time Respondent came upon the automobile accident there was no longer an "emergency" required for immunity by Health & Safety Code section 1799.102. Furthermore, Respondent did not provide "emergency care." [55]

On October 12, 2005, Respondent filed her Reply to the Motion for Summary Judgment.[56] The trial court heard the summary judgment motion on October 17, 2005. Plaintiff argued that at the moment Respondent acted, there was no longer an emergency. The trial court disagreed and stated that, as a matter of law, there was an emergency.

The lower court also determined Respondent acted in good faith because she thought the car was going to blow up. Plaintiff argued that Respondent's placement of Plaintiff next to the vehicle belied her good faith belief. But, the court said that action went to the quality of care given.

The trial court therefore granted summary judgment in favor of the Respondent.[57] The judgment was entered on November 28, 2005. Ms. Torti and Mr. Watson stipulated to judgment in Ms. Torti's favor on their reciprocal comparative indemnity Cross-Complaints so that no issues remained to be decided in the court below and this Court could determine the legal issues involved in the summary judgment.[58]

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[55] Watson Opp. Mot. Summ. Judgmt., pp. 5-8 [AA 0469-AA 0521].

[56] Reply to Opp. Mot. Summ. Judgmt. [AA 0638-AA 0649].

[57] Order Granting Summary Judgment [AA 0662-AA 0672].

[58] Stipulation to Judgment on the Cross-Complaints [AA 0673-AA 0679].

Ms. Torti timely appealed the judgment on the Complaint and Cross-Complaint on February 1, 2006.

On March 21, 2007, the Court of Appeal filed its decision in this case. The Court of Appeal pointed out the rule of legislative construction that the courts should strive to harmonize a particular statute with the entire statutory scheme for that subject matter:

> [T]he plain meaning rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose' and provisions relating to the same subject matter must be construed together and "harmonized to the extent possible" (citation). "We must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences" (citation). "The legislative purpose will not be sacrificed to a literal construction of any part of the statute" (citation).[59]

The Court of Appeal, noting that Section 1799.102 applied to emergency care rendered at the scene of an emergency, found that the Emergency Medical Services Act, in Section 1797.70 had defined the term "scene of an emergency" as "a condition or situation in which an individual has a need for immediate medical attention." [60]

The Court of Appeal therefore determined that the immunity afforded by Section 1799.102 required the rendering of emergency medical services at the scene of a medical emergency.[61] The Court also noted the placement of

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[59] Court of Appeal's Opinion, p. 8.

[60] *Ibid.*, p. 9.

[61] *Ibid.*

Section 1799.102 in the "Emergency *Medical* Services Act" and the Act's stated purpose (to train and encourage people to provide CPR and lifesaving first aid) was further evidence the Legislature intended Section 1799.102 to afford immunity only for those providing emergency medical services at the scene of an accident.[62]

On April 30, 2007, Ms. Torti Petitioned this Court for review of the Court of Appeal's decision. On June 13, 2007, this Court granted Ms. Torti's Petition.

ARGUMENT

I. IF SECTION 1799.102 WERE APPLIED TO VOLUNTEERS WHO DO NOT PROVIDE EMERGENCY *MEDICAL* CARE, IT WOULD OVERRULE THE CURRENT GOOD SAMARITAN STATUTE AND CONFLICT WITH OTHER IMMUNITY STATUTES

If Section 1799.102 were to apply to every person who merely moves or transports an accident victim, as in this case, this Court will necessarily have to reverse its decision in *Williams v. State of California, supra*, and render CACI Jury Instruction No's. 450 and 452 unusable.

Williams at p. 23 stated that one does not have a duty to come to the aid of another; but if she does so, she is under a duty to use due care. Section 1799.102 on the other hand does not require due care. *Williams* was decided five years *after* the enactment of Section 1799.102. Since *Williams*, this Court has consistently held that the non-medical care provider must use due care when attempting to aid an accident victim.

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[62] *Ibid.*, pp. 9-10.

This Court upheld the common law good Samaritan law as recently as 1998 in *Artiglio v. Corning*, wherein the Court emphasized the long-standing history of the common law good Samaritan laws:[63]

> Over 30 years ago, we described this negligent undertaking theory of liability - sometimes referred to as the "Good Samaritan" rule - as "[f]irmly rooted in the common law [of negligence]" (citation) and cited section 324A as one of the authorities establishing its controlling principles (citations). Indeed, "[i]t is ancient learning that one who assumes to act, even though gratuitously, may thereby become subject to a duty of acting carefully, if he acts at all." [64]
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> * * *
>
> Thus, it is settled law that one "who, having no initial duty to do so, undertakes to come to the aid of another - the 'good Samaritan' " - has "a duty to exercise due care in performance and is liable if (a) his failure to exercise care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking." (*Williams v. State of California* (1983) 34 Cal. 3d 23.[65]

In the light of such longstanding law, it is hard to understand Ms. Torti's claim that the Court of Appeal's decision creates unworkable distinctions for ordinary people. Her interpretation of Section 1799.102 and *Williams* conflict. The Court of Appeal's decision and *Williams* do not conflict. That is because *Williams* did not involve a volunteer's use of CPR or first aid as contemplated by Section 1799.102.

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[63] (1998) 18 Cal. 4th 604.

[64] *Artiglio* at 613.

[65] *Ibid.*

CACI Jury Instruction No's. 450 and 452 also require the volunteer to use reasonable care. Thus, Ms. Torti's application of Section 1799.102 also conflicts with these jury instructions.

Although the doctrines espoused in *Williams* and *Artiglio* and instructed by CACI Instruction No's. 450 and 452 continue to be used to this day, no decision has interpreted Section 1799.102 to apply to a volunteer who does not provide medical care.

Further, if one is immune for performing *any* act for an accident victim, we do not need any other immunity statutes. For example, if the Legislature agreed with Ms. Torti's interpretation of Section 1799.102, why in 1987 did it enact Harbors & Navigation Code section 656 ("Section 656")? That section provides immunity to boat owners who render assistance to those involved in boating accidents, so long as their assistance is reasonable.

Ms. Torti's interpretation of Section 1799.102 would seem to apply to boating accidents. Yet, Section 656's "reasonable standard" is inconsistent with Section 1799.102's "good faith" standard. A more consistent interpretation of Section 1799.102 is that it provides immunity where medical care is rendered.

This interpretation is also in keeping with the intent of the original good Samaritan statutes which were designed to encourage medical professionals to assist accident victims. The January 25, 1977, Legislative Counsel letter, submitted by Ms. Torti (Exhibit C in her Request for Judicial Notice) states that "the term 'Good Samaritan Laws' refers to statutes which, with respect to emergency situations, modify the common law liability imposed upon physicians for the negligent performance of their professional

duties." [66]

If the Legislature had intended by Section 1799.102 to abrogate the long-standing common law good Samaritan law, as Ms. Torti urges, it would have expressly done so. In the recent case *Brodie v. Workers Appeals Bd.*,[67] this Court stated:

> [W]e do not presume the Legislature intends, when it enacts a statute to overthrow long-established principles of law unless such intention is clearly expressed or necessarily implied. [68]

II. THE COURT OF APPEAL'S INTERPRETATION OF SECTION 1799.102 IS CONSISTENT WITH THE LEGISLATURE'S INTENT

The Court of Appeal interpreted Section 1799.102 to be consistent with the remainder of the The Emergency **Medical Services** System and Prehospital Emergency **Medical Care Personnel** Act,[69] by finding that the Act did not apply to good Samaritans who do not perform emergency medical services at the scene of an emergency.

The Court of Appeal was correct when it perceived that its "primary duty when interpreting a statute is to determine and effectuate the

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[66] Indeed, *the* Good Samaritan, introduced in the Bible at Luke 10:33-34, "bound up the wounds" of the unfortunate traveler and thus provided first aid.

[67] (2007) 40 Cal. 4th 1313.

[68] *Brodie* at 1324.

[69] Health & Safety Code sections 1797 et. seq., Emphasis added.

Legislature's intent." [70] Here, because Section 1799.102 was simply one section in the comprehensive Emergency Medical Services Act, the Court of Appeal correctly concluded that it could not look at the plain language of Section 1799.102 *in isolation* but "must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences. (citation) The legislative purpose will not be sacrificed to a literal construction of any part of the statute." [71]

This Court has also declared the familiar rules of statutory construction: "Our fundamental task in interpreting a statute is to ascertain the Legislature's intent so as to effectuate the law's purpose. We first examine the statutory language, giving it a plain and commonsense meaning. We do not examine the language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment." [72]

The Court of Appeal also correctly noted that the intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit

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[70] Court of Appeal Decision, pp. 7-8 (Citing *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 39 Cal. App. 4th 1379, 1382; *People v. Ramirez* (1995) 33 Cal. App. 4th 559, 563).

[71] *Ibid.*, p. 8, citing *Giles v. Horn* (2002) 100 Cal. App. 4th 206, 220.

[72] *Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal. 4th 733, 737.

of the act.[73] This Court recently stated in *Troppman v. Valverde*:[74]

> 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 subject matter must be harmonized to the extent possible.[75]

Here, the Legislature disclosed the "spirit" of the Emergency Medical Services Act in Section 1797.5:

> It is the intent of the Legislature to promote the development, accessibility, and provision of emergency **medical** services to the people of the State of California. ¶ Further, it is the policy of the State of California that people shall be encouraged and **trained to assist others** at the scene of a **medical emergency**. Local governments, agencies, and other organizations shall be encouraged to offer training in **cardiopulmonary resuscitation and lifesaving first aid techniques** so that people may be adequately trained, prepared, and encouraged to assist others immediately. [76]

The Legislature therefore declared its intent to train and encourage people, both professionals and laypersons, to provide life-preserving emergency medical care. If the Legislature had not wanted the entire Act to apply to medical care, it would not have used the word "medical" repeatedly in the title nor declared the intent of the Act to: "provide the state with a statewide system for emergency medical services."

Thus, the Emergency Medical Services Act was intended to promote proper training in life saving first aid techniques and CPR, then encourage

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[73] *Lundgren v. Deukmejian* (1988) 45 Cal. 3d 727, 735.

[74] (2007) 40 Cal. 4th 1121, 1135

[75] *Troppman* at p.1135.

[76] Emphasis added.

those who have been trained to use their emergency medical training without fear of civil liability. The Court of Appeal correctly found no legislative intent to provide immunity for *non-life-saving conduct* and non-medical care by *untrained* individuals.

The Legislature also never intended Section 1799.102 to apply to transporting an accident victim. Section 1799.102's predecessor was Health & Safety Code section 1767,[77] which originally read:

> In order to encourage citizens to participate in emergency medical services training programs and to render emergency medical services to fellow citizens, no person who in good faith and not for compensation renders emergency care at the scene of an emergency **or who transports an injured person for emergency medical treatment** shall be liable for any civil damages.[78]

In 1977, the Legislature removed the language: "or who transports an injured person for emergency medical treatment" from the bill.[79] The section was then enacted in 1978, without the "transporting" language. If the Legislature did not want to give immunity to a rescuer who drove an accident victim to the hospital, it certainly did not want to see immunity given to someone who took an accident victim from an accident vehicle, placed her next to the vehicle but did not render any emergency *medical* care.

Ms. Torti is therefore mistaken when she states the Court of Appeal "glossed" the word "medical" into Section 1799.102 to make it apply only to persons rendering emergency medical care at the scene of a medical

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[77] Chaptered SB 125 [AA 0032-AA 0041].

[78] Assembly Bill 1301, as introduced on March 31, 1977, emphasis added [AA 0009-AA 0012].

[79] AB 1301, amended June 10, 1997 [AA 0013-AA 0016].

emergency. The Legislature effectively placed the words there, both because of its above-cited intent and by the definitions it gave to words in the Act.

Specifically, Section 1799.102 states that it applies to care given at scenes of *emergencies*. The Legislature defined "scene of an emergency" in Section 1797.70 of the Act as "a condition or situation in which an individual has a need for immediate **medical** attention, or where the potential for such need is perceived by emergency medical personnel or a public safety agency."[80]

Therefore, the Legislature defined the application of Section 1799.102 to *medical* emergencies. The Court of Appeal correctly found that Plaintiff was not in need of emergency medical care *from Ms. Torti*. She was not trained in, and did not render, any emergency medical care. As the Court of Appeal stated: "Because the record demonstrated the absence of a medical emergency, Ms. Torti was not entitled to summary judgment on this basis." [81]

The Court of Appeal's decision is consistent with *Nally v. Grace Community Church*,[82] wherein the court referred to Section 1799.102 as "exempting from liability nonprofessional persons giving *cardiopulmonary resuscitation*."

The Legislature also chose to place Section 1799 right in the middle of the "Emergency **Medical** Services Act" in the Health & Safety Code. If the Legislature had intended Section 1799.102, to apply to non-medical aid, it would have enacted legislation in the Civil Code to bar liability for certain conduct.

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[80] Emphasis added.

[81] Court of Appeal Decision, p. 4.

[82] (1988) 47 Cal. 3d 278, 298.

For example, the legislature enacted Civil Code section 1714.2 which is completely consistent with Section 1799.102 and the Court of Appeal decision. Section 1714.2 states:

> In order to encourage citizens to participate in emergency medical services training programs and to render emergency medical services to fellow citizens, no person who has completed a basic cardiopulmonary resuscitation course which complies with the standards adopted by the American Heart Association or the American Red Cross for cardiopulmonary resuscitation and emergency cardiac care, and who, in good faith, renders emergency cardiopulmonary resuscitation at the scene of an emergency shall be liable for any civil damages as a result of any acts or omissions by such person rendering the emergency care. (b) This section shall not be construed to grant immunity from civil damages to any person whose conduct in rendering such emergency care constitutes gross negligence.

The Court of Appeal's decision is also consistent with Civil Code section 1714.21 which immunizes acts of medical care by good Samaritans:

> Any person who, in good faith and not for compensation, renders emergency care or treatment by the use of an AED[83] at the scene of an emergency is not liable for any civil damages resulting from any acts or omissions in rendering the emergency care . . . A person or entity that acquires an AED for emergency use pursuant to this section is not liable for any civil damages resulting from any acts or omissions in the rendering of the emergency care by use of an AED, if that person or entity has complied with subdivision (b) of Section 1797.196 of the Health and Safety Code.

The Civil Code also contains other immunity statutes that are not based on the providing of medical services. Section 1714 specifically bars liability for furnishing alcohol. Section 1714.1 limits the liability of a parent or

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[83] Defined in 1714.21(a)(1) as an "automatic external defibrillator."

guardian having custody of a minor to $25,000. And Section 1714.25(a) bars liability for negligent preparation of food donated to a nonprofit charitable organization or food bank.

Ms. Torti is therefore mistaken when she asserts that the Legislature did not intend Section 1799.102 to apply only to emergency medical care. The Court of Appeal correctly found that the Legislature's *only* intent by passing the Act was to ensure the proper emergency *medical* care of the state's citizens. Any other interpretation of Section 1799.102 by the Court of Appeal would have been inconsistent with Civil Code sections 1714.2 and 1714.21, CACI Jury Instructions No's. 450 and 452 and *Williams v. State of California, supra.*

III. THE COURT OF APPEAL'S DECISION WILL NOT LEAD TO UNINTENDED NEGATIVE CONSEQUENCES

Ms. Torti's claim that the Court of Appeal's decision will have far-ranging unintended consequences is simply not true. There is nothing in the Court of Appeal's decision that would discourage people from helping others.

The Court of Appeal's decision left intact the common law good Samaritan law. The same altruistic motivation for some people to act before the Court of Appeal decision was decided is still there. And the motivation of other people to not want to get involved, is also still there.

The Court of Appeal's decision does not undercut the State's disaster preparedness program. Volunteers in state disasters are provided with immunity from their non-wilful acts.[84]

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[84] Disaster Service Worker Volunteer Program (Gov't. Code §8657).

Ms. Torti also argues that the Court of Appeal decision "undoes" Health & Safety Code sections 1797.107 and 1797.108. In reality, the Court of Appeal decision is completely consistent with these sections.

Section 1799.107 provides *qualified* immunity for *paid* emergency rescue personnel who provide "emergency services." Section 1799.107, passed after the original enactment of the Emergency Medical Services Act, has its own definition of "emergency services." It has a narrow application - to encourage *public emergency rescue personnel* to come to the aid of accident victims. The care is defined to include first aid, medical services, rescue procedures and transportation to insure the health or safety of a person in imminent peril.

Thus, unlike Section 1799.102, Section 1799.107 specifically addresses immunity for *paid* rescue workers whose job it is to run into burning buildings and rescue people. Similarly, Section 1799.108 applies to *certified* professionals who provide prehospital emergency field care treatment at the scene of an emergency and also offers *qualified* immunity.

Therefore, firefighters, ambulance drivers and EMT's who perform *non-medical care* are entitled to immunity so long as their actions are not reckless. The Court of Appeal's decision is consistent with Sections 1799.107 and 1799.108 because one who performs non-medical care is entitled only to qualified immunity.

Indeed, virtually all good Samaritan statutes provide only qualified immunity. The rescuer cannot be grossly negligent or be guilty of willful and wanton misconduct.[85] On the other hand, if off-duty firefighters, ambulance

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[85] See, e.g., Civil Code §§ 1714.21 and 1714.25 and Health & Safety Code §§ 1799.106 - 1799.107.

drivers or EMT's perform *medical* care, they are arguably entitled to the absolute immunity of Section 1799.102.

IV. THE COURT OF APPEAL'S DECISION WILL NOT LEAD TO UNWORKABLE SITUATIONS FOR ORDINARY PERSONS

Ms. Torti Opening Brief contends that the Court of Appeal decision will have adverse consequences because people will now be less willing to step forward to try to help those in peril. In order to try to make her point, Ms. Torti asks the Court to assume a completely false hypothetical situation. She asks the Court to assume that she was moving the Plaintiff in order for someone else to render CPR.

First, of all, that is not what happened. Secondly, Plaintiff was not in need of CPR. She was at all times breathing just fine. Finally, Ms. Torti yanked Plaintiff out of the car like a rag doll because she panicked.

We also know that Ms. Torti did not move Plaintiff because she was concerned about an explosion or fire. At the moment Petitioner opened the car door, she knew that what she previously thought was smoke was really only air bag dust.[86]

Furthermore, if Ms. Torti were indeed concerned about fire or explosion, she would not have dropped Plaintiff within a foot of the vehicle she contends she thought could explode. She also would not have left Plaintiff's body so that one-half was on the curb and one-half on the street. She would not dropped Plaintiff on top of a fallen pole.[87]

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[86] Torti Depo, pp. 95-96 [AA 0430, AA 0609].

[87] Plf Depo, p. 101 [AA 0444]; Carb Depo, p. 19 [AA 0467].

In any event, Petitioner's far-fetched two-part CPR hypothetical makes no sense. What good would it do to move the victim who is not breathing if the one who is to perform time-sensitive CPR is not at the scene?

The Court of Appeal's decision leaves in tact the common law good Samaritan law. This law promotes volunteer rescues. The law supports what any reasonable altruistic person would think:

> I know I am not legally required to help this person but I would like to do so. However, since I am trying to do the right thing, I should not be held responsible even if I end up not being able to help this person *unless* I make matters worse.

Good Samaritans want to help and should be encouraged to do so. The Court of Appeal's decision does no damage to the common law good Samaritan statute.

V. CONCLUSION

The Court of Appeal simply found that the Legislature intended Health & Safety Code section 1719.102 to give immunity to good Samaritans who provide medical care, such as life saving first aid or CPR in a medical emergency. Ms. Torti did not provide emergency medical care to the Plaintiff.

The trier of fact should be allowed to apply CACI Jury Instruction No. 450 to Ms. Torti's conduct and determine whether her actions increased the harm to Plaintiff.

Mr. Watson respectfully requests that this honorable Court affirm the Court of Appeal's decision.

DATED: October 15, 2007

CRANDALL, WADE & LOWE
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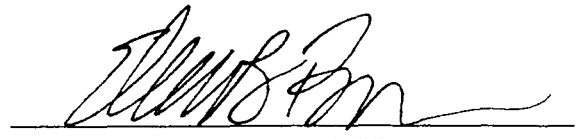
CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 14(c)(1))

The Text of this brief consists of 6,532 words as counted by the Corel WordPerfect, Version 8, word processing program used to generate this brief.

DATED: October 15, 2007



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STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 7700 Irvine Center Drive, Suite 700, Irvine, CA 92618-2929.

On **October 15, 2007,** I served the foregoing document described as **ANSWER BRIEF ON THE MERITS** on the interested parties in this action as set forth on the attached service list in the following manner:

(X) **BY MAIL.** I am familiar with this firm's practice of collection and processing correspondence for mailing with the United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service on the same day in the ordinary course of business pursuant to Code of Civil Procedure §1013a. I am aware that on a motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

( ) **BY FACSIMILE.** In addition to service by mail as set forth above, a copy of said document(s) was also delivered by facsimile transmission to the addressee(s) pursuant to Code of Civil Procedure §1013(e).

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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 and that this declaration was executed on **October 15, 2007**, at Irvine, California.

Teresa Schreiber

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