No. S279597

In the Supreme Court
of the
State of California

GUSTAVO NARANJO,
Plaintiffs and Appellants,

v.

SPECTRUM SECURITY SERVICES, INC.,
Defendant and Appellant.

ANSWER TO PETITION FOR REVIEW

Review of a Decision from the Court of Appeal of the State of California
Second Appellate District, Division Four
Case No. B256232

Appeal from the Superior Court for the State of California,
County of Los Angeles, Case No. BC372146
The Honorable Barbara M. Scheper

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Defendant and Appellant Spectrum Security Services, Inc. ("Spectrum") submits this Answer to the Petition for Review filed by Plaintiff and Appellant Gustavo Naranjo ("Naranjo").

I. INTRODUCTION

Naranjo's Petition for Review is premised on his assertion that the Court of Appeal's decision on remand here is supposedly in conflict with *Kao v. Holiday* (2017) 12 Cal.App.5th 947 and *Furry v. East Bay Publishing, LLC* (2018) 30 Cal.App.5th 1072. But as the Court of Appeal correctly explained in its Opinion, *Kao* and *Furry* are easily distinguished. In both *Kao* and in *Furry*, the employers justified their clear violation of overtime pay and wage statement reporting obligations based on their claimed subjective, yet objectively unreasonable, beliefs they were in compliance. The *Kao* and *Furry* courts held that an employer's ignorance of the law provides no defense to the imposition of Labor Code section 226 penalties.

By contrast, here, the Court of Appeal held that the state of the law as to whether meal-break premium pay must be reported on a wage statement was not clear until this Court's 2022 decision. Thus, Spectrum's violation of Labor Code section 226—long ago in June 2004 to September 2007—could not have been "knowing and intentional," as a matter of fact and law. Further, as part of its substantial evidence review, the Court of Appeal found that the evidence Spectrum presented at trial raised a good faith, objectively reasonable dispute as to whether Spectrum was required, in the first instance, to include the premium pay in the wage statements under the California Labor Code. Thus, just as

its violation of Labor Code section 203 was not "willful," Spectrum's violation of Labor Code section 226 was not and could not have been "knowing and intentional."

In short, the differing outcomes here, and in *Kao* and *Furry*, are tied to the very different facts and law involved in those two decisions. There is no need for this Court to intervene to secure uniformity of decision.

Nor does this case present an unsettled question of law. That the Court of Appeal's Opinion equates the word "willful" with the word "intentional" is supported by the plain meaning of those words, and by California precedent, including this Court's decision in *In re Twombley* (1948) 31 Cal.2d 801, which explained that a "willful" violation of Labor Code section 216 occurs when an employer "knowingly and intentionally" refuses to pay wages. The Courts of Appeal's decisions in *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1 and *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, like the Opinion here, also construe "willful" to mean "intentional" and further hold, as here, that a knowing violation of law cannot occur when the state of the law was unsettled at the time of the violation.

Naranjo's disagreement with the Court of Appeal's conclusion about his claimed entitlement to Labor Coder section 226 penalties does not furnish grounds for review. While he attacks the Court of Appeal for failing to follow this Court's direction on remand, the Court of Appeal did precisely what it was asked to do. For the reasons that follow, this Court should deny the Petition for Review.

II. NARANJO'S ISSUE PRESENTED FOR REVIEW

Naranjo frames the issue for review as follows:

> Does an employer's good faith belief that it complied with Labor Code section 226(a) preclude a finding that its failure to report wages was 'knowing and intentional,' as is necessary to recover penalties under Labor Code section 226(e)(1)?

The issue, as framed, misconstrues the Court of Appeal's Opinion, and ignores the unique circumstances of this case, which was pending for 15 years before this Court's 2022 decision. Spectrum would reframe the issue for review as follows:

> Where the law concerning the requirements of Labor Code section 226(a) was unsettled at the time of the employer's violation, does a good faith, objectively reasonably dispute that the employer was in compliance preclude a finding that its failure to report meal break penalty pay was 'knowing and intentional,' as is necessary to recover penalties under Labor Code section 226(e)(1)?

III. STATEMENT OF THE CASE

The facts giving rise to this case date back to June 2004, nearly two decades ago and long before many of the authorities cited in Naranjo's Petition for Review ("PFR") existed. Although this Court is already acquainted with this case, a brief recitation of the facts and procedural history is necessary.

A. Naranjo's Meal Break Claim, Spectrum's Affirmative Defenses, and Phases I and II of the Trial.

Spectrum provides secure custodial services to federal agencies, including the U.S. Marshall's Service, ICE, DEA, FBI and the federal Bureau of Prisons. (*Naranjo v. Spectrum Security*

Svcs., Inc. (2022) 13 Cal.5th 93, 102; 9-JA-1980.) Pursuant to its contracts with federal agencies, Spectrum employs officers who transport and guard federal prisoners and detainees who require medical attention or who have other appointments outside custodial facilities. (*Id.*) Additionally, Spectrum officers work at detention removal operation locations where federal ICE agents supervise their work. (9-JA-1980.)

During the time period relevant here, June 4, 2004 through September 30, 2007, Spectrum maintained an on-duty meal period policy. (9-JA-1981.) It did so because the nature of its officers' work—maintaining custody of prisoners and detainees and ensuring public and medical personnel safety—did not allow for officers to leave their guarded prisoners and detainees. (*Id.*) Further, compliance with Spectrum's federal contracts required continuous custody of prisoners and detainees. (9-JA-1984.) If an officer failed to follow the on-duty meal period policy, they were subject to termination of their employment, as occurred with Naranjo. (*Naranjo*, *supra*, Cal.5th at 102.)

In June 2007, Naranjo filed a putative class action on behalf of Spectrum officers, alleging that Spectrum violated California meal break requirements, as set forth in Labor Code section 226.7 and Industrial Welfare Commission ("IWC") Wage Order No. 4-2001, and therefore owed its officers an additional hour of "premium pay" for each shift worked in excess of five hours. (*Id.*; 1-JA-1-11.) Naranjo contended that officers' knowledge of the on-duty meal period policy was insufficient to meet the requirements of Wage Order No. 4-2001, which requires

that an agreement to an on-duty meal period be in a writing that advises employees of their right to revoke the agreement. (See *id.*; IWC Wage Order No. 4-2001(11)(A).)

Naranjo's complaint also alleged two additional Labor Code violations related to Spectrum's premium pay obligations. (*Naranjo*, *supra*, 13 Cal.5th at 103.) According to the complaint, Spectrum was required to report the premium pay (that it had not paid) on employees' wage statements (Labor Code section 226) and was required to timely provide the premium pay to employees upon their discharge or resignation (Labor Code sections 201-203), but had done neither. (*Id.*)

The trial court initially granted summary judgment in favor of Spectrum on federal law preemption grounds, but the Court of Appeal reversed. (*Naranjo v. Spectrum Security Services, Inc.* (2009) 172 Cal.App.4th 654 ("*Naranjo I*").) On remand, the trial court certified a class for the meal break and related timely payment and wage statement claims and then held a trial in stages. (*Naranjo*, *supra*, 13 Cal.5th at 103.)

The first phase was a bench trial involving several of Spectrum's affirmative defenses to the meal break claim. (*Id.*; 9-JA-1981-1985.) Specifically, Spectrum argued the California Labor Code did not apply to its officers because they were working at federal enclaves and/or performing federal functions and supervised by federal employees such that they should be treated as federal employees. (9-JA-1981-1985.) Spectrum's defenses included those based on the federal enclave doctrine, the intergovernmental immunity doctrine, and the federal function

defense for federal actors, among others. (*Id.*) After hearing witness testimony, including testimony from Spectrum's vice-president and personnel manager, John Oden ("Oden"), and expert testimony regarding whether the properties at which officers worked were federally owned, the trial court found that "Spectrum . . . failed to carry its burden to establish any of these defenses."[1] (9-JA-1981.)

In the second phase of trial, the meal break class cause of action was tried to a jury. (*Naranjo v. Spectrum Security Svcs. Inc.* (2019) 40 Cal.App.5th 444, 455 ("*Naranjo II*").) The trial court rejected Spectrum's argument that its written on-duty meal period policy, communicated to officers, was sufficient to meet the requirements of IWC Wage Order No. 4-2001(11)(A). (*Id.*) It therefore directed a verdict for the class on the meal break claim for the period from June 2004 to September 2007. (*Id.*) A jury, however, found Spectrum not liable for the period beginning on October 1, 2007, after Spectrum circulated and obtained written agreements to on-duty meal breaks. (*Id.*)

B. Naranjo's Sections 203 and 226 Claims and Phase III of the Trial.

Naranjo's Labor Code sections 203 and 226 claims were addressed in phase three of the trial.[2] (*Id.*) As to both claims,

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[1] / Naranjo incorrectly states that the trial court instead concluded that Spectrum's affirmative defenses were "unsupported by the facts and law." (PFR at 10.)

[2] / Labor Code sections 203 and 226 are hereafter referred to respectively as Section 203 and Section 226.

Spectrum argued that because premium pay was not a wage, it did not need to be reported on a wage statement or paid at the time of separation of employment. (9-JA-1987.) Relying on *Murphy v. Kenneth Cole Prods, Inc.* (2007) 40 Cal.4th 1094—a decision that issued just two months before Naranjo filed his complaint—the trial court rejected this argument. (*Id.* at 1987-1988.)

As to the Section 203 untimely final wages claim, Spectrum also argued that Naranjo failed to meet his burden to prove that Spectrum's violation was "willful," as required by Section 203(a). "A 'willful' failure to pay wages within the meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages are due." (Cal. Code Regs., tit. 8, § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201 ["The settled meaning of 'willful' as used in section 203, is that the employer has intentionally failed or refused to perform an act which was required to be done"].) The trial court agreed with Spectrum that its failure to pay premium pay at separation of employment was not willful because its "defenses presented in the first phase of trial as described above, if successful, would have defeated plaintiffs' claims in their entirety. Although the court ultimately ruled against Spectrum, the court finds that the defenses were presented in good faith and

were not unreasonable or unsupported by the evidence." (9-JA-1991.)[3]

As to the Section 226 wage statement claim, Spectrum argued that Naranjo failed to satisfy his burden of establishing a "knowing and intentional" violation and that officers had suffered injury. The trial court disagreed, concluding that Oden's failure to read IWC Wage Order 4-2001 established that Spectrum's omission of premium pay from wage statements was "not inadvertent, but intentional." (9-JA-1989-1990.) Further, officers suffered injury "since they could not determine from the wage statements the [amount of premium pay] to which they were entitled." (9-JA-1990.)

The trial court then entered judgment for the plaintiff class on the meal period and wage statement claims, and awarded attorneys' fees under Section 226. (*Naranjo*, *supra*, 13 Cal.5th at 104.)

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[3] / While not mentioned in the trial court's Statement of Decision, Spectrum's defense that it did not *know* premium pay was a wage that had to be paid at the time of separation of employment would also have defeated the Section 203 claim. (See *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 9 ["We conclude that given that uncertainty [in the law], appellant should not be penalized for believing that setoff was proper and payment of wages not required. Accordingly, appellant's attempt to exercise a right to setoff was not wilful [sic]."].)

C. In 2022, This Court Held that Premium Pay Must Be Included on Wage Statements.

Both sides appealed. (*Id.*) The Court of Appeal affirmed the trial court's determination that Spectrum violated California meal break laws during the period from June 2004 to September 2007, but reversed the court's holding that a failure to pay premium pay could support claims under Sections 203 and 226. (*Id.*) This Court then definitively resolved the latter issue in its May 2022 decision. Resolving "confusion in the Courts of Appeal as well as in the federal courts," this Court held that "[m]issed-break premium pay is indeed wages subject to the Labor Code's timely payment and reporting requirements, and it can support section 203 waiting time penalties and section 226 wage statement penalties where relevant conditions for imposing penalties are met." (*Id.* at 104, 125.)

Because the Court of Appeal never considered the parties' arguments as to whether Spectrum's "state of mind" (*id.* at 103) met the conditions for imposition of penalties under Sections 203 and 226, this Court remanded the case for the Court of Appeal to "address Naranjo's argument that the trial court erred in finding Spectrum had not acted willfully (which barred recovery under . . . § 203)" and "Spectrum's argument that its failure to report missed-break premium pay on wage statements was not 'knowing and intentional.'" (*Id.* at 126.)

D. The Court of Appeal Followed this Court's Remand Instructions Precisely.

Consistent with this Court's direction, the Court of Appeal proceeded to resolve the two issues on remand. (*Naranjo v.*

Spectrum Security Svcs. (2023) 88 Cal.App.5th 937 ("Opinion").) The Court of Appeal first found that substantial evidence existed to support the trial court's conclusion that Spectrum's violation of Section 203 was not "willful." (*Id*. at 945-948.) In doing so, the Court of Appeal highlighted the trial testimony of the parties' experts as to whether the properties where Spectrum's officers worked were federally owned, and Oden's trial testimony that Spectrum's contracts are exclusively with federal agencies and that, pursuant to those contracts, Spectrum's officers have custody of prisoners and detainees from the moment they leave federal facilities until they return. (*Id*. at 947-948.) Although the trial court ultimately concluded that Spectrum failed to meet its burden to establish application of the federal enclave doctrine, the intergovernmental immunity doctrine, and the federal function defense for federal actors, the Court of Appeal concluded that substantial evidence supported the trial court's conclusions that these defenses were presented in good faith. (*Id*.) Thus, the trial court properly denied recovery of waiting time penalties under Section 203 based on its finding that Spectrum's violation was not "willful." (*Id.* at 948.)

The Court of Appeal next turned to Spectrum's argument that the trial court's finding of a "knowing and intentional" violation of Section 226 was not supported by substantial evidence. (*Id*. at 948-951.) The court concluded that the very same evidence that supported the trial court's conclusion that Spectrum's violation of Section 203 was not "willful" precluded a finding that Spectrum's violation of Section 226 was "knowing

and intentional." (*Id*.) As the Court of Appeal explained, "willful" and "intentional" mean the same thing. (*Id*. at 949.)

As support, the Court of Appeal relied upon: (1) *In re Twombley* (1948) 31 Cal.2d 801, wherein this Court explained that a "willful" violation of Labor Code section 216 occurs when an employer "knowingly and intentionally" refuses to pay wages; and (2) decisions of the Courts of Appeal in *Barnhill, supra,* and *Amaral, supra,* construing "willful" to mean "intentional." (*Id.* at 949-950.) Because case law long equated the terms "willful" and "knowing and intentional," a good faith (objectively reasonable) dispute as to liability for the underlying violation makes penalties under Section 226 inappropriate. (*Id*.)

The Court of Appeal acknowledged, but distinguished, *Kao v. Holiday* (2017) 12 Cal.App.5th 947 and *Furry v. East Bay Publishing, LLC* (2018) 30 Cal.App.5th 1072, wherein employers argued that their ignorance of the law shielded them from liability for Section 226 penalties. As the Court of Appeal explained: "Spectrum's good faith dispute argument is that it presented its federal defenses during phase one of the trial in good faith, not that it was ignorant of the law. We therefore find neither [*Kao* or *Furry*] applicable." (*Id*. at 951, n. 7.)

In addition to its unremarkable and common sense conclusion that "willful" and "intentional" are synonymous, the Court of Appeal further noted this Court's conclusion that premium pay is "wages" that must be reported on wage statements was first articulated in 2022, long after the events at issue here. (*Id*. at 951, fn. 8.) Thus, it was unclear how

Spectrum could have *known* back in 2004-2007 that the wage statements it issued to employees failed to comply with Section 226. (*Id*.) This uncertainly in the law also supported reversal of the award of Section 226 penalties. (*Id*.) This conclusion is grounded in case law, including *Barnhill* and *Amaral*, wherein the courts explained that the state of the law was unclear at the time of the employers' underlying violations and, hence, penalties were inappropriate. (*Barnhill*, 125 Cal.App.3d at 9; *Amaral*, Cal.App.4th at 1202.)

IV. THE PETITION FAILS TO ESTABLISH GROUNDS FOR REVIEW.

A. Case Outcomes That Differ Based on Different Facts Does Not Mean There is a Split in Authority Requiring This Court's Intervention.

Naranjo argues that this Court's review of the Opinion is necessary to secure uniformity of decision on an important issue of state law. (PFR 16.) According to Naranjo, the Opinion is in "direct conflict" with *Kao* and *Furry*. (PFR 16-17.) As referenced above, however, the facts of those cases are readily distinguished from those here and neither decision is in conflict with the Opinion.

The plaintiff in *Kao* worked for a bus tour business owned by a husband and wife. (*Kao, supra,* 12 Cal.App.5th at 951-952.) After relocating to the United States from Taiwan, the plaintiff moved in with the husband and wife, and worked for their company both before and after his H-1B work visa issued. (*Id*. at 952.) The plaintiff was paid a $2,500 per month "salary," less a monthly rent deduction. (*Id*.) Although the plaintiff worked 50

hours a week, he was never paid overtime wages, and he never received any wage statements until after his work visa issued. (*Id*. at 953.) The wage statements that the plaintiff eventually began receiving did not accurately itemize his total work hours or rates of pay. (*Id*. at 960.) The plaintiff filed a lawsuit for unpaid minimum and overtime wages, and also sought penalties under Section 226. (*Id* at 953.)

Applying settled principles of law, the Court of Appeal concluded there was *no evidence at all* to support the travel company's argument that the plaintiff was a trainee, rather than an employee, during the period of time he awaited issuance of his work visa. (*Id*. at 957.) The Court of Appeal further found, again applying settled principles of law, that the employer's administrative exemption defense was "clearly" not applicable. (*Id*. at 957-958.) Thus, the plaintiff was entitled to recover for unpaid minimum and overtime wages. (*Id*. at 960.)

As to the plaintiff's claim for penalties under Section 226, the Court of Appeal explained that the employer's "mistake of law" concerning the plaintiff's entitlement to minimum and overtime wages did not relieve it from liability. (*Id*. at 961-962.) Because the law was clear that the plaintiff was an employee and not a trainee, and was clear that the plaintiff was not exempt from overtime laws, even if the husband and wife subjectively

thought otherwise, their "mistake of law" furnished no excuse for failing to comply with Section 226.[4] (*Id*.)

The Court of Appeal similarly concluded in *Furry* that an employer's "ignorance of the law" does not furnish a defense to a Section 226 claim. (*Furry*, *supra*, 30 Cal.App.5th at 1085.) The underlying violation of law there, as in *Kao*, was an employer's failure to pay the plaintiff overtime wages. (*Id*. at 1075.) The plaintiff in *Furry* worked for a local newspaper, and was paid a $20,000 annual salary, plus commissions. (*Id*. at 1077.) The opinion does not indicate why the employer believed Furry was an exempt employee, but notes that the trial court found the employer's exemption defense was not established. (*Id*. at 1078.) Although the employer issued wage statements to the plaintiff, they did not provide information about hours worked or rates of pay. (*Id*.)

The Court of Appeal in *Furry* reversed the judgment in the employer's favor, and found that the trial court should have awarded the plaintiff damages for unpaid overtime wages because the fact of damage, if not the amount, had been established. (*Id*. at 1080.) Because the trial court had not reached the plaintiff's claim for Section 226 penalties, the Court of Appeal directed the trial court, on remand, to determine if the plaintiff met his burden of establishing entitlement to Section

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[4] / In this regard, *Kao* reflects both a subjective and objective test for liability under Section 226. While the employer in *Kao* subjectively believed it was in compliance with the law, its belief was clearly not objectively reasonable. The same holds true for *Furry*.

226 penalties. (*Id*. at 1084.) In so holding, the Court of Appeal further opined that the employer's belief that the plaintiff was an exempt employee did not furnish a defense to the Section 226 penalty claim because "ignorance of the law" did not furnish an excuse. (*Id*.)

As the Court of Appeal here correctly noted, and as the foregoing demonstrates, *Kao* and *Furry* are distinguishable on multiple grounds and neither is in conflict with the Opinion.

First, Spectrum's beliefs about the law and whether it had to comply with Labor Code section 226.7 and IWC Wage Order No. 4-2001, even if wrong, were not just subjectively held but objectively reasonable, as evinced by the trial testimony of its witnesses and the legal arguments it advanced. By contrast, the employers in *Kao* and *Furry* had no objectively reasonable basis to believe they were in compliance with overtime pay obligations. Indeed, their understanding of the law was manifestly in error.[5]

Second, there was never any dispute in *Kao* or *Furry* about the required contents for wage statements, as here. The wage statements in *Kao* and *Furry* did not include overtime wages and rates of pay, information that Section 226, by its express terms, requires. (Lab. Code 226(a).) By contrast, here, the issue was whether Spectrum had to include meal period premium pay as

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[5] / In this regard, Naranjo misconstrues the Court of Appeal's Opinion here. At multiple points in his Petition for Review, Naranjo suggests the Court of Appeal found an employer's "subjective belief" sufficient to excuse it from penalties. (PFR 17, 19, 22-23.) The Opinion says no such thing.

"wages" on wage statements, a legal issue not resolved until this Court's 2022 decision.

Third, this Court's decision in *Murphy v. Kenneth Cole Prods, Inc.* (2007) 40 Cal.4th 1094 did not issue until April 2007, near the tail end of the wage statement penalty period at issue.[6] It is unclear how Spectrum could be charged with knowledge of law that was not yet on the books, much less intentional non-compliance. Further, while *Murphy* made clear that meal-break premium pay is a wage, and not a penalty, *for statute of limitations purposes*, the opinion did not address whether premium pay needed to be reported as "wages" on a wage statement. As this Court acknowledged in *Naranjo*, "confusion" on this topic existed, including after this Court's decision in *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, which held that an action under Section 226.7 for meal period premium pay was "not an 'action brought for the non-payment of wages'" for purposes of fee shifting under Labor Code section 218.5. (*Id.* at 1251.) By contrast, in *Kao* and in *Furry*, Section 226 expressly and clearly required the employers to report all hours worked and associated rates of pay on the plaintiffs' wage statements.

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6 / Naranjo's Petition for Review characterizes *Murphy* as "long-standing jurisprudence." (PFR 18.) While *Murphy* was indeed decided 16 years ago, what matters here is whether Spectrum knew of the law and intended to violate it between June 2004 and September 2007.

In sum, the Opinion here and the *Kao* and *Furry* cases are readily reconciled and not in conflict. The differing outcomes are tied to the different facts and law involved. Under *Kao* and *Furry*, an employer's ignorance of settled law does not furnish a defense to a Section 226 claim. By contrast, where there is a good faith, objectively reasonable dispute as to whether compliance was required in the first instance, there is no "knowing and intentional" violation and Section 226 penalties cannot be awarded.

B. The Court of Appeal Did Exactly What It Was Asked to Do on Remand.

Naranjo also argues that the Court of Appeal failed to determine whether substantial evidence supported the trial court's decision with respect to Section 226 penalties. (PFR 18-20.) Naranjo asserts that, rather than engage in a substantial evidence analysis, the Court of Appeal instead "changed the relevant conditions for imposing penalties." (PFR 19.) Not so. The Court of Appeal did precisely what this Court asked it to do on remand.

As noted, the Court of Appeal first examined the trial testimony of Spectrum's witnesses to conclude that substantial evidence supported the trial court's decision to deny Section 203 penalties. (88 Cal.App.5th at 945-948.) That same discussion of the evidence applies with equal force to the Court of Appeal's ensuing discussion of Section 226 penalties. (*Id.* at 951 ["As discussed above, substantial evidence supports the trial court's finding that Spectrum presented defenses in the first phase of

trial in good faith. That finding [precludes both Sections 203 and 226 penalties] . . . ."].) The Court did not need to repeat its discussion of the evidence twice.

The Court of Appeal also did not "change the relevant conditions" for Section 226 penalties. Rather, it distinguished the authorities (*Kao* and *Furry*) upon which Naranjo relied, and instead relied on California precedent (*In re Twombley*, *Barnhill*, and *Amaral*) to conclude that the words "willful" in Section 203 and "intentional" in Section 226 are synonymous.[7] (*Id*. at 949-950.) Thus, the outcome under both statutes as to penalties—on the specific evidence and arguments at issue in this case—should be the same.

The Court of Appeal further noted that an additional argument applied in the Section 226 context. (*Id*. at 951, fn. 8.) Given the unclear state of the law—until this Court's 2022 decision—as to whether premium pay was "wages" that must appear on a wage statement, Spectrum also could not reasonably have *known*—between June 2004 and September 2007—that the wage statements it issued were not compliant.[8] (*Id*.) Thus,

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[7] / Naranjo asserts that the Court of Appeal's decision "derives solely from regulation 13520." (PFR 19.) As the Opinion makes clear, its decision derives from California case law, including decisions that pre-dated regulation 13520. (88 Cal.App.5th at 949-950.) Naranjo further asserts that the words "willful" and "intentional" are "different phrases" and that a legislative history is necessary to determine their meaning. (PFR 21-22.) The dictionary, and case law, says otherwise.

[8] / The trial court's Statement of Decision, which faulted Oden for not reading IWC Wage Order No. 4-2001 until after the

Section 226 penalties should not have been awarded on this ground as well. (*Barnhill, supra,* 125 Cal.App.3d at 9 ["We conclude that given that uncertainty [in the law], appellant should not be penalized for believing that setoff was proper and payment of wages not required. Accordingly, appellant's attempt to exercise a right to setoff was not wilful [sic]."]; *Amaral, supra,* 163 Cal.App.4th at 1202 [there was no willful violation where "the legal obligations imposed on employers by the LWO were unclear at the time of [the employer's] violations."].)

In sum, this Court directed the Court of Appeal on remand to address "Spectrum's argument that its failure to report missed-break premium pay on wage statements was not 'knowing and intentional.'" The Court of Appeal did exactly that. That Naranjo disputes the outcome of that analysis does not provide a basis for this Court's review.

V. CONCLUSION

As set forth above, the Petition for Review fails to establish grounds for review as set forth in California Rule of Court 8.500(b). The Opinion, and *Kao* and *Furry*, are readily reconciled and not in conflict. Further, the Opinion correctly applies California precedent equating the "willful" and "knowing and

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lawsuit was filed in June 2007, did not take into account the uncertainty in law as to whether premium pay constituted "wages" that needed to be reported on a wage statement. (9-JA-1989.) Even if Oden had read IWC Wage Order No. 4-2001 sooner, it would not have answered that issue, which was not resolved until this Court's 2022 decision.

intentional" standards for liability, and does not present an unsettled question of law.

Dated: April 25, 2023

Respectfully submitted,

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Pursuant to California Rules of Court, rule 8.520(c), I certify that this Answer to Petition for Review, contains 4,774 words, including footnotes, based on the Microsoft Word program, and not including the Tables of Contents and Authorities, the caption page, signature blocks, any attachments or this certification page.

/s/ Paul J. Killion
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I declare under penalty of perjury that the foregoing is true and correct.

04-25-2023
Date

/s/Paul Killion
Signature

Killion, Paul (124550)
Last Name, First Name (Attorney Number)

Duane Morris
Firm Name

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **NARANJO v. SPECTRUM SECURITY SERVICES**
Case Number: **S279397**
Lower Court Case Number: **B256232**

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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.

4/25/2023
Date

/s/Paul Killion
Signature

Killion, Paul (124550)

Last Name, First Name (PNum)

Duane Morris

Law Firm