

Case No. S279397

In the
Supreme Court
of the
State of California

GUSTAVO NARANJO et al.,
Plaintiffs and Appellants,

v.

SPECTRUM SECURITY SERVICES, INC.,
Defendant and Appellant.

REVIEW OF A DECISION FROM THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION FOUR, CASE NO. B256232
LOS ANGELES SUPERIOR COURT · HON. BARBARA M. SCHEPER · NO. BC372146

REPLY TO ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

Notably absent from the Answer to Petition for Review of Defendant Spectrum Security Services, Inc. (Spectrum) is any reference to *Gola v. University of San Francisco* (Cal. Ct. App., Apr. 13, 2023, No. A161477) 2023 WL 2927103 (*Gola*), despite the decision issuing nearly two weeks prior to Spectrum’s filing. *Gola* further confirms the conflict created by the opinion of the Court of Appeal in *Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 937 (Opinion), which concerns the appropriate test for determining a “knowing and intentional” violation of Labor Code section 226.¹ Despite Spectrum’s efforts to factually reconcile the split among the appellate courts, the question as to the applicable standard requires this Court’s input in order to ensure uniformity of decision and proper interpretation of the Labor Code.

DISCUSSION

In *Gola*, a class of adjunct faculty members alleged, among other claims, that the University of San Francisco (University) failed to issue compliant wage statements under section 226, subdivision (a), because they did not include total hours worked during each pay period or the applicable hourly rate. (*Gola, supra*, 2023 WL 2927103 at p. *2.) The University asserted that all of the class claims—including the wage statement claim—were preempted by the Labor Management Relations Act (LMRA), and in addition, it could not be liable for penalties because its violation of section 226 was not knowing and intentional. (*Gola, supra*, 2023 WL 2927103 at pp. *2-3.)

¹ Unless otherwise stated, all subsequent unlabeled statutory references are to the Labor Code.

The trial court disagreed with the University, finding it liable for wage statement penalties under section 226, subdivision (e)(1), because the University “knew that facts existed bringing its actions or omissions within the provisions of section 226.” (*Gola, supra*, 2023 WL 2927103 at p. *3.) “The trial court found as a factual matter that ‘the evidence is not that the University had a good faith belief [that instructors were exempt under state law]; the evidence is that they never thought about it.’” (*Ibid.*)

The Court of Appeal, First District, Division 2, affirmed the judgment of the trial court, finding that it applied the correct legal standard, which the appellate court identified as the “predicate facts” test. (*Gola, supra*, 2023 WL 2927103 at pp. *7-8.) In reaching its conclusion, the Court of Appeal rejected the University’s invitation to apply a “good faith” test, used by some federal district courts, and by the Second District Court of Appeal in the Opinion at issue here. (*Gola, supra*, 2023 WL 2927103 at p. *7.) A side-by-side comparison evidences the distinct legal standards:

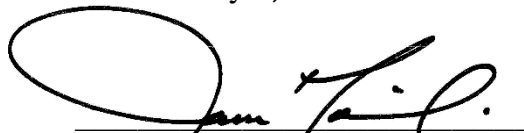
Applicable Test	Predicate Facts	Good Faith
Standard	If an employer knows facts that would trigger its obligation to issue a wage statement, its failure to comply is knowing and intentional. Only truly errant or mistaken violations are excused, not competing legal interpretations. (<i>Gola, supra</i> , 2023 WL 2927103 at pp. *7-8.)	An employer may escape liability for wage statement violations if a court finds that the employer should have issued compliant wage statements but had a good faith belief that its practices were lawful. (<i>Gola, supra</i> , 2023 WL 2927103 at p. *8.)
Cases Applying	<i>Gola v. University of San Francisco</i> (Cal. Ct. App., Apr. 13, 2023, No. A161477) 2023 WL 2927103 <i>Furry v. East Bay Publishing, LLC</i> (2018) 30 Cal.App.5th 1072 <i>Kao v. Holiday</i> (2017) 12 Cal.App.5th 947	<i>Naranjo v. Spectrum Security Services, Inc.</i> (2023) 88 Cal.App.5th 937

Spectrum's attempt to reconcile the Opinion at issue and the decisions in *Kao* and *Furry* is unavailing. *Gola* makes that clear. The differing outcomes are not tied to the different facts. (APR 16-21.) The different outcomes are the result of different legal standards. Here, the appellate court altered the relevant conditions for imposing penalties under section 226 beyond predicate facts to allow Spectrum's good faith belief to preclude the imposition of penalties. Having done so without interpreting the statutory language, reviewing the legislative history, or considering the ostensible objectives to be achieved by section 226, the Opinion requires review by this Court.

CONCLUSION

For the reasons set forth in the Petition for Review and above, Representative Plaintiff Gustavo Naranjo respectfully urges this Honorable Court to grant review in this matter.

Dated: May 4, 2023

A handwritten signature in black ink, appearing to read "Jason C. Marsili", is written over a horizontal line.

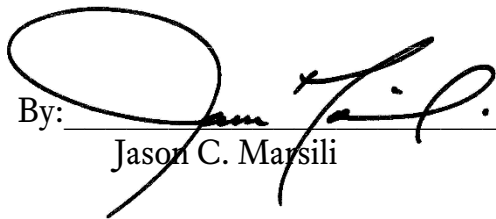
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Pursuant to rule 8.504(d)(1) of the California Rules of Court, the undersigned counsel for Plaintiffs and Appellants certifies that this Reply to Answer to Petition for Review contains **696** words in proportionately-spaced, 13-point Equity B type, exclusive of tables of contents and certificate of service, as determined by the word processing system used in the preparation of this brief, Microsoft Word 2013.

Respectfully submitted this 4th day of May, 2023.

By:  _____
Jason C. Marsili

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