

S279397

Case No. S _____

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

PETITION FOR REVIEW

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ISSUE PRESENTED FOR REVIEW

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

INTRODUCTION

In *Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93 (*Naranjo*), this Court held that missed-break premium pay is wages which can support waiting time penalties and/or wage statement penalties when the relevant conditions for imposing them are satisfied. The Court remanded the case to resolve questions regarding the trial court's imposition of penalties that had not been addressed by the Court of Appeal. Specifically, the Court of Appeal was instructed to address Plaintiff's argument that the trial court erred in finding that Defendant had not acted willfully, barring recovery under Labor Code section 203. Additionally, the Court of Appeal was instructed to address Defendant's argument that the trial court erred in finding its failure to report missed-break premium pay on wage statements was knowing and intentional, as required by Labor Code section 226.

Although the Court of Appeal considered on remand substantial evidence in reviewing the trial court's denial of waiting time penalties under Labor Code section 203, the appellate court did not undertake the same analysis with respect to Labor Code section 226. Rather, the Court of Appeal changed the relevant conditions for considering a "knowing and intentional" failure by adopting an unrelated regulation and applying it to preclude the imposition of wage statement penalties. In doing so, the

opinion of the Court of Appeal provides employers with a “new defense in employee lawsuits.” (Romero, *Plain Meaning of ‘Willful’ Gives Employers New Defense*, L.A. Daily J. (Mar. 2, 2023) p. 2.) “Whereas before the employer did not have the defense of a good faith [dispute], they now have it” as a result of the opinion of the Court of Appeal. (*Ibid.*)

Naranjo reaffirmed the proper interpretation and application of the State’s remedial worker protection framework by elucidating long-standing jurisprudence that had been muddled by lower reviewing courts over the years. The heightened standard of intentionality subsequently imposed by the opinion of the Court of Appeal on remand threatens to challenge that framework anew. The opinion creates a conflict in the Courts of Appeal and highlights the current discord in the federal courts on the issue presented. As this case remains well-suited for the Court’s consideration, the resulting disarray from the Court of Appeal decision need not represent *Naranjo*’s legacy. While Defendant considers the opinion of the Court of Appeal “a very significant finding that will change the landscape in this area of labor law for California employers” (*ibid.*), Representative Plaintiff Gustavo Naranjo respectfully urges this Honorable Court to grant review.

STATEMENT OF THE CASE¹

Defendant Spectrum Security Services, Inc. (Spectrum) provides short-term custodial services to federal agencies. Spectrum security officers (officers) transport and guard prisoners and detainees who require outside medical attention or have other appointments outside custodial

¹ Where applicable, the factual and procedural background is set forth as outlined by this Court previously in *Naranjo, supra*, 13 Cal.5th at pp. 102-104.

facilities. (*Naranjo, supra*, 13 Cal.5th at p. 102, citing *Naranjo v. Spectrum Security Services, Inc.* (2009) 172 Cal.App.4th 654, 660 (*Naranjo I.*) Representative Plaintiff Gustavo Naranjo (Naranjo) worked for Spectrum as an officer. During his employment, Spectrum prohibited officers from taking meal and rest periods. As its policy stated: “This job does not allow for breaks other than using the hallway bathrooms for [a] few minutes.” (2 JA 0221-0223, 0254-0256.) As a result, Spectrum did not provide officers with 30-minute off-duty meal periods or 10-minute duty-free rest breaks. (8 JA 1756; 8 RT 3307, 3652-3653.)

Spectrum terminated Naranjo because he left his post to take a meal period. (*Naranjo, supra*, 13 Cal.5th at p. 102, citing *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444, 453–454 (*Naranjo II.*) Naranjo filed a putative class action on behalf of Spectrum officers, alleging causes of action for meal and rest period violations and for violations of Labor Code sections 203 and 226.² (*Id.* at p. 103.) The complaint sought damages and penalties prescribed by those statutes as well as prejudgment interest. (*Ibid.*) The trial court certified a class for adjudication of the meal period claim and related timely payment and wage statement claims. (*Ibid.*) The case proceeded to trial in three phases.

I. TRIAL PROCEEDINGS

In the first phase, the trial court heard evidence regarding various federal defenses asserted by Spectrum. The trial court determined that Spectrum’s asserted defenses were unsupported by the facts or the law and found in favor of Naranjo and the class. (9 JA 1981-1985.)

² Unless otherwise stated, all subsequent unlabeled statutory references are to the Labor Code.

The trial court empaneled a jury for the second phase to determine the merits of the meal period claim. The trial court directed a verdict in favor of the class for the period of June 4, 2004 through September 30, 2007, and awarded damages pursuant to section 226.7. (9 JA 1985-1987.)

In the third phase, the trial court heard evidence and argument regarding the class's entitlement to penalties under sections 203 and 226 for meal period violations that occurred during the directed verdict period. The trial court found that penalties under sections 203 and 226 were legally available in cases based on a violation of section 226.7. (9 JA 1988.) With respect to section 226 wage statement penalties, the court found in favor of Naranjo and the class, noting that Spectrum's failure to report missed-break premium pay in its employees' wage statements was knowing and intentional and not inadvertent. (9 JA 1989.) As to section 203 waiting time penalties, the trial court found in favor of Spectrum, determining that its defenses had been presented in good faith thereby precluding a finding of willfulness pursuant to California Code of Regulations, title 8, section 13520 (regulation 13520). (9 JA 1990-1991.)

II. PREVIOUS APPELLATE PROCEEDINGS

Both Spectrum and Naranjo appealed. The Court of Appeal affirmed the portion of the judgment finding Spectrum liable for meal period violations and awarding damages under section 226.7. (*Naranjo*, *supra*, 13 Cal.5th at p. 104, citing *Naranjo II*, *supra*, 40 Cal.App.5th at pp. 457-463.) With respect to the applicability of sections 203 and 226, the Court of Appeal reversed the trial court's holding that a failure to pay meal break premiums could support claims under the wage statement and timely payment statutes, holding "that section 226.7 actions do not entitle

employees to pursue the derivative penalties in sections 203 and 226.”

(*Ibid*; see also *Naranjo II, supra*, 40 Cal.App.5th at p. 474.)

This Court reversed the Court of Appeal and held the following:

“Missed 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 the relevant conditions for imposing penalties are met.” (*Naranjo, supra*, 13 Cal.5th at p. 125.) The Court remanded the matter for further proceedings to determine whether such penalties are available in this case. (*Ibid.*)

III. PROCEEDINGS ON REMAND

The parties submitted supplemental briefing to address relevant decisions issued after *Naranjo II*, and the Court of Appeal issued its opinion, affirming the trial court’s denial of waiting time penalties under section 203 and *reversing* the trial court’s award of wage statement penalties under section 226.³ (Slip Op. at p. 20.) With respect to waiting time penalties, the Court of Appeal held that “substantial evidence supported the trial court’s finding that Spectrum’s defenses were presented in good faith, and were not unreasonable or unsupported by the evidence.” (Slip Op. at p. 15.) Consequently, pursuant to regulation 13520, the trial court properly denied waiting time penalties under section 203 based on the existence of a good faith dispute. (Slip Op. at pp. 8-9, 15.)

With respect to section 226, the Court of Appeal held that the existence of a good faith dispute under regulation 13520 equally precludes

³ Pursuant to Rule 8.504, subdivision (b), a copy of the Court of Appeal opinion is attached hereto as Exhibit A (referred herein as “Opinion” or “Decision”).

the imposition of wage statement penalties. (Slip Op. at pp. 15-16.) “That finding [of a good faith dispute] not only precludes a ‘willfulness’ finding under section 203, but also a ‘knowing and intentional’ finding under section 226. The trial court therefore erred by awarding penalties under section 226 based on its conclusion that the omission of the premium pay on employees’ wage statements was ‘knowing and intentional’ because it was ‘not inadvertent[.]’” (Slip Op. at pp. 8-9, 20.) The Opinion was certified for publication and filed on February 27, 2023, and became final on March 29, 2023.

REASONS FOR GRANTING REVIEW

“‘Courts have diverged over the degree of intentionality required to establish a violation of [section] 226,’” which has resulted in two lines of cases adopting different interpretations of the phrase “knowing and intentional.” (*Arroyo v. International Paper Co.* (N.D.Cal. 2020) 611 F.Supp.3d 824, 839-840 (*Arroyo*)). One line of cases associates the “knowing and intentional” standard under section 226, subdivision (e)(1) with the willfulness requirement under section 203, subdivision (a). (*Id.* at p. 840; compare § 226, subd. (e)(1) [“knowing and intentional failure”] with § 203, subd. (a) [“willfully fails”].) The other line of cases tethers the phrase “knowing and intentional” to the statutory text of section 226, subdivision (e)(3), which excuses the imposition of penalties for isolated errors and inadvertent mistakes. (*Id.* at pp. 840-841.)

Under the standard more closely ascribed to the statutory text, a failure to comply with section 226 is “knowing and intentional” if an employer knows that facts exist bringing its actions or omissions within the purview of subdivision (a). More simply, if the employer is aware of the

factual predicate underlying the violation—that the wage statements did not contain the required information—the failure is knowing and intentional. (*Senne v. Kansas City Royals Baseball Corp.* (N.D.Cal. 2022) 591 F.Supp.3d 453, 571 (*Senne*) (internal quotations and citations omitted).) This minimal standard is designed to protect against the imposition of penalties for accidental omissions, such as “isolated and unintentional payroll error[s] due to a clerical or inadvertent mistake[s].” (Lab. Code § 226, subd. (e)(3).) It is not intended to excuse employers’ ignorance of the law. (See *Senne*, *supra*, 591 F.Supp.3d at p. 571; *Arroyo*, *supra*, 611 F.Supp.3d at p. 841.).

Both this Court and the Court of Appeal (previously) have acknowledged a distinction in the Legislature’s use of “knowing and intentional” in Section 226, subdivision (e)(1) relative to the willfulness standard in Section 203, subdivision (a). (See *Naranjo*, *supra*, 13 Cal.5th at pp. 103-104 [“The wage statement statute authorizes damages and penalties only for ‘knowing and intentional’ violations and excuses ‘isolated and unintentional payroll error due to a clerical or inadvertent mistake,’ while the timely payment statutes impose penalties only for ‘willful[]’ failures to make payment.”] (citations omitted); *Naranjo II*, *supra*, 40 Cal.App.5th at p. 456 [“Section 203, *unlike* section 226, requires a finding of willfulness by the employer before penalties may be assessed.”] (emphasis added).) Yet, the Court of Appeal on remand opted to conflate the respective standards in reversing the imposition of penalties under section 226:

The issue here therefore turns on whether the “willful” standard in section 203 is the same as the “knowing and intentional” standard in section 226, such that a “good faith dispute” defense should apply to claims for penalties under both sections. For the reasons discussed

below, we conclude an employer’s good faith belief that it is not violating section 226 precludes a finding of a knowing and intentional violation.

(Slip Op. at pp. 15-16.)

Whereas the Court of Appeal considered substantial evidence in reviewing the trial court’s denial of waiting time penalties under section 203, the appellate court changed the relevant conditions for imposing wage statement penalties under section 226.⁴ In doing so, the Opinion not only merged the intentionality standards of sections 203 and 226, but expressly applied regulation 13520 to preclude the imposition of penalties under section 226. This result creates a conflict in the Courts of Appeal and highlights the current discord in the federal courts.

I. REVIEW OF THE OPINION IS NECESSARY TO SECURE UNIFORMITY OF DECISION ON AN IMPORTANT QUESTION OF STATE LAW

“Section 226 is part of a matrix of laws intended to ensure workers are correctly and adequately compensated for their work.” (*Ward v. United Airlines, Inc.* (2020) 9 Cal.5th 732, 753 (*Ward*).) As this Court has recognized previously, enforcement mechanisms are often just as important as the underlying statutory obligation (if not more so) to ensure employer compliance. (See *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1105-1106 (*Murphy*) [discussing the pay remedies introduced to enforce section 226.7].) Subdivision (e)(1) was added to section 226 to

⁴ A trial court’s findings of willfulness under section 203, subdivision (a), and of a knowing and intentional failure under section 226, subdivision (e)(1), are both reviewed for substantial evidence. (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632; *Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 872-73.)

ensure that employers provide complete and accurate information to their employees by penalizing a knowing and intentional failure to do so. The Court of Appeal Opinion imposes a heightened standard of intentionality for employees to recover penalties for injurious failures. Consideration of this question has been irregular, and lower courts would benefit from guidance on this issue which affects all California employees who are entitled to accurate wage statements.

A. The Opinion Creates a Conflict Among Other Published Court of Appeal Decisions

The Court of Appeal acknowledges that the Opinion opposes two published decisions that conclude an employer’s good faith belief that it complied with the law does not constitute a viable defense to a claim for violation of section 226. (Slip Op. at p. 19 n.7.) In *Kao v. Holiday* (2017) 12 Cal.App.5th 947 (*Kao*), the court found a knowing and intentional violation occurred when the employer knew it had provided wage statements that did not contain hours worked or the rate of pay. (12 Cal.App.5th at p. 961.) “Liability is established even if [the employer] believed, in good faith, that Kao was a nonemployee trainee outside wage statement requirements or an exempt employee with lesser wage statement requirements. Such a belief amounts to a mistake of law that is not excused under the statute mandating itemized wage statements.” (*Id.* at p. 962, citing *Novoa v. Charter Communications, LLC* (E.D. Cal. 2015) 100 F.Supp.3d 1013, 1028-1029.)

Similarly, in *Furry v. East Bay Publishing, LLC* (2018) 30 Cal.App.5th 1072 (*Furry*), the court concluded that the employer’s good faith belief that the employee was exempt from overtime did not constitute a viable defense to his claim under section 226. “Numerous other courts considering the issue have rejected a good faith defense to Labor Code section 226, because

it stands contrary to the often repeated legal maxim: ‘ignorance of the law will not excuse any person, either civilly or criminally.’” (*Id.* at p. 1085, citing *Cabardo v. Patacsil* (E.D.Cal. 2017) 248 F.Supp.3d 1002, 1010 [collecting cases] (internal quotations omitted).)

The Opinion stands in direct conflict with *Kao* and *Furry*. The Court of Appeal attempts to distinguish these cases in light of the quoted legal maxim set forth in *Furry*, asserting that neither case is applicable because Spectrum had not argued at trial “that it was ignorant of the law.” (Slip Op. at p. 19 n.7.) But neither did the employers in *Kao* or *Furry*. (*Kao*, *supra*, 12 Cal.App.5th at p. 961 [asserting the plaintiff was a nonemployee trainee]; *Furry*, *supra*, 30 Cal.App.5th at 1079 [asserting that the plaintiff was exempt from overtime].) Nor would most employers make this argument. The appellate court’s attempt to distinguish *Kao* and *Furry* on this basis only emphasizes the conflict between an employer’s subjective belief about legal compliance and whether that belief (ignorant or otherwise) should preclude the imposition of penalties under section 226.

B. The Opinion Acknowledges that District Courts are Divided on this Issue

Consistent with the resulting conflict now in the Courts of Appeal, district courts have long been divided on the applicable standard for establishing a knowing and intentional violation of section 226. As stated by one district court:

Courts have diverged over the degree of intentionality required to establish a violation of § 226. All courts agree that the statute requires the employee to prove something more than a simple failure to provide required information. Some courts have held that provision of an inadequate wage statement is generally knowing and intentional so long as it

was not a clerical error or inadvertent mistake.
[Citation]

The majority of courts, however, have not taken this expansive view of the knowing-and-intentional requirement. In particular, many courts have held that the employer's good faith belief that it is not in violation of § 226 precludes a finding of a knowing and intentional violation. [Citation]

(*Stafford v. Brink's, Inc.* (C.D.Cal. 2014, No. CV-14-1352-MWF) 2014 WL 12586066 at *5.) The appellate court's Opinion recognized this discord before opting to follow the majority of district court decisions. (Slip Op. at pp. 17-19.)

II. REVIEW OF THE OPINION IS NECESSARY TO ENSURE PROPER INTERPRETATION AND APPLICATION OF THE LABOR CODE FOR ALL CALIFORNIA EMPLOYEES

Holding in *Naranjo* that missed-break premium pay is wages subject to the same timing and reporting rules as other forms of compensation, this Court elucidated long-standing jurisprudence that had been muddled by lower reviewing courts in the decade following *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244 (*Kirby*). (*Naranjo, supra*, 13 Cal.5th at pp. 108 ["These are not new observations."]; 111-112 [acknowledging that *Kirby* did not repudiate or narrow *Murphy*.) As a result, the import of *Naranjo* extends beyond its holding in that the decision reaffirmed proper interpretation and application of the State's remedial worker protection framework. The Opinion of the Court of Appeal threatens to derange that framework anew.

With respect to section 226, this Court made clear that an employer's obligation to report wages earned includes an obligation to

report premium pay for missed breaks. (*Id.* at p. 121.) “This means that, *provided the conditions specified in the statute are otherwise met*, failure to report premium pay for missed breaks can support monetary liability under section 226 . . .” (*Ibid* (emphasis added); compare Slip Op. at p. 7 [omitting reference to conditions specified in the statute].) On this framework, the Court remanded the case to ascertain whether the relevant conditions were met.

Rather than determine whether substantial evidence supported the trial court’s decision with respect to section 226—as it did with respect to section 203—the appellate court instead changed the relevant conditions for imposing penalties under section 226 without interpreting the statutory language, reviewing the legislative history, or considering the ostensible objectives to be achieved by the statutory provision.

To be clear, no reference to “good faith” appears in the statutory text of section 226. Nor is any reference to “good faith” contained in the statutory text of section 203. The Court of Appeal’s application of a good faith exception to section 226 derives solely from regulation 13520, which sets forth an exception to the willful standard such that a good faith dispute will preclude the imposition of penalties. (Slip. Op. at pp. 8-9, citing Cal. Code Regs., tit. 8, § 13520 [“However, a good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203.”].)

In changing the relevant conditions for imposing penalties under section 226, the Court of Appeal adopted regulation 13520 which was expressly enacted for section 203, applied that regulation to an entirely different statute—section 226—and excused the imposition of wage statement penalties based upon Spectrum’s subjective good faith belief that

it complied with the law. Neither the statutory text nor the legislative purpose of section 226 support this limitation of the knowing and intentional standard to the detriment of California employees.

A. The Opinion Fails to Properly Interpret the Statutory Language of Section 226

It has long been held by this Court that statutes governing conditions of employment are to be construed broadly in favor of protecting employees. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340; *Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 794.) When determining the intent of the Legislature to that end, courts “must look first to the words of the statute, ‘because they generally provide the most reliable indicator of legislative intent.’” (*Murphy, supra*, 40 Cal.4th at p. 1103 (citations omitted).)

Despite the maxims of statutory interpretation that inform courts in ascertaining the intent of the Legislature, the Opinion makes no attempt to determine the reason for using the phrase “knowing and intentional” in section 226, subdivision (e)(1), rather than the term “willfully,” as used in section 203, subdivision (a). Notably, section 226 is the *only* statute in the Labor Code that employs the phrase “knowing and intentional.” (See Lab. Code § 226, subd. (e)(1).) Whereas “willfully” is used abundantly. (See, e.g., Lab. Code §§ 90, 91, 93, 98.6, 98.74, 108.2, 152, 203, 203.5, 206, 216, 222, 226.8, 227, 230, 230.1, 230.3, 230.5, 230.8, 247, 976.) “Ordinarily, where the Legislature uses a different word or phrase in one part of a statute than it does in other sections or in a similar statute concerning a related subject, it must be presumed that the Legislature intended a different meaning.” (*Rashidi v. Moser* (2014) 60 Cal.4th 718, 725 (internal quotations and citations omitted).) Here, sections 203 and 226 are both located in

Article 1 (General Occupations) of Chapter 1 (Payment of Wages) of Part 1 (Compensation) of Division 2 (Employment Regulation and Supervision) of the Labor Code. The use of different phrases cannot be ignored and, at a minimum, should be considered by a court when making a proclamation on the operative standard to recover remedial penalties under the Labor Code.

Rather, the appellate court garners support from the analysis contained in *In re Trombley* (1948) 31 Cal.2d 801 (*Trombley*), a case that considered the constitutionality of section 216. (Slip Op. at p. 16.) In *Trombley*, this Court used the phrase “knowingly and intentionally” to describe the criminality of an individual who willfully refuses to pay wages after a demand for payment is made. (*Trombley*, supra, 31 Cal.2d at pp. 807-808.) The appellate court professed that “the *Trombley* court linked the ‘knowing and intentional’ standard to a ‘willfulness’ standard,” and used this association to support its conclusion that regulation 13520 applies to section 226. (Slip Op. at p. 16.) This analysis is not an appropriate substitute for proper statutory interpretation.

Courts must ascertain the intent of the *Legislature* to interpret statutory language, not the considerations of other courts. (*California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 632.) “It cannot be too often repeated that due respect for the political branches of our government requires [courts] to interpret the laws in accordance with the expressed intention of the Legislature.” (*Id.* at p. 633.) Courts have “no power to rewrite [a] statute so as to make it conform to a presumed intention which is not expressed.” (*Ibid.* (citations omitted).) Yet, the Court of Appeal made no effort to ascertain the intent of the Legislature and instead applied regulation 13520 to section 226 based upon a discussion from this Court nearly four score ago.

B. The Opinion Fails to Consider the Legislative Purpose of Section 226

Where a statute's language is susceptible to more than one interpretation, a court may turn to extrinsic aids to assist in interpretation, such as the objectives to be achieved by the statute. (*Murphy, supra*, 40 Cal.4th at pp. 1103, 1105, citing *People v. Jefferson* (1999) 21 Cal.4th 86, 94.) In concluding that regulation 13520 applies to section 226, the appellate court did not consider the distinct purposes of section 203 and section 226.

The purpose of section 203 is "to incentivize employers to pay end-of-employment compensation when it is due, rather than forcing employees to seek administrative relief or to go to court." (*Naranjo, supra*, 13 Cal.5th at p. 110, citing *McLean v. State of California* (2016) 1 Cal.5th 615, 626; *Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1400; *Smith v. Superior Court* (2006) 39 Cal.4th 77, 82.) In comparison, the purpose of section 226 is "to enable employees to verify they have been compensated properly, without shortchanging or improper deduction." (*Naranjo, supra*, 13 Cal.5th at p. 119, citing *Ward, supra*, 9 Cal.5th at p. 752.) In *Naranjo*, this Court determined that the purpose of section 226 would be frustrated if distinctions were drawn between different kinds of wages owed based upon how employees became entitled to those wages. (*Ibid.*) Similarly, the purpose of section 226 is not served by incorporating regulation 13520, which would excuse noncompliance based upon an employer's belief that the wage statements reported all the wages the employer believed it owed. "A statement that conceals amounts earned, on the ground that they also were not paid, is not an accurate statement, and it does not comply with the statute." (*Ibid.*) Similarly, an employer's *belief* that it did not have to pay wages in the first instance should not preclude a finding that the erroneous

wage statement omitting the information was “knowing and intentional.” Allowing such an argument to be made, as the Opinion does, “impedes employees’ ability to verify they have been paid properly and,” undermines “administrative enforcement of wage and hour protections.” (*Ibid.*)

C. The Opinion Fails to Establish a Coherent Standard for Sister Courts to Follow

Absent any semblance of statutory interpretation, the Court of Appeal’s effort to supplant section 226 with regulation 13520 creates greater confusion as to the appropriate analysis for imposing penalties. Throughout the Opinion, the Court of Appeal utilizes the terms “good faith dispute” and “good faith belief” interchangeably. (Compare Slip Op. at pp. 3, 8, 10, 15-17 [“belief”] with pp. 6, 8, 9-11, 12, 14, 16, 18-20 [“dispute”].) The concepts, however, are not the same.

The existence of a “dispute” and a party’s “belief” are not synonymous regardless of whether either exists in good faith. The latter is far more subjective in favor of the employer. What is worse, the Opinion demonstrates that courts allowing for a good faith defense to preclude penalties under section 226 are unclear about what the dispute and/or belief must be. Some district courts hold that an employer’s good faith belief that it is not violating the Labor Code precludes a finding of a knowing and intentional violation. (Slip Op. at p. 17.) The Court of Appeal holds that an employer’s good faith belief that it is not violating section 226 precludes a finding of a knowing and intentional violation. (Slip Op. at p. 16.) This resulting disarray should not represent *Naranjo*’s legacy as the case remains well-suited to resolve the issue presented.

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III. THE POSTURE OF THE CASE REMAINS WELL-SUITED FOR THIS COURT’S CONSIDERATION

This case remains “an exceedingly rare beast.” (See *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, 12.) Whereas the posture of the case was well-suited to decide whether section 226 applied to missed-break premium pay, it is equally well-suited to decide the appropriate standard for imposing penalties under section 226.

A. No Other Open Questions of Fact or Law Remain

To recover wage statement penalties under section 226, subdivision (e)(1), three elements must be established: (1) a violation of section 226, subdivision (a); (2) that is knowing and intentional; and (3) a resulting injury. (*Arroyo, supra*, 611 F.Supp.3d at p. 835, citing *Willner v. Manpower Inc.* (N.D.Cal. 2014) 35 F. Supp. 3d 1116, 1128.) This Court has already resolved the first and third elements, holding that the “additional credited hour of work and the corresponding premium pay owed must be reported on the wage statement,” and that failing to include such information “deprives the employee of information needed to evaluate whether the payment is correct, [resulting] in injury under the terms of the statute.” (*Naranjo, supra*, 13 Cal.5th at p. 120.) Accordingly, the only open question is the appropriate standard for finding a knowing and intentional violation. The question is not theoretical or academic, but actual and realized, and the conditions precedent necessary to address the question have been satisfied. There are no other open questions of fact or law that would frustrate this Court’s consideration of the issue presented.

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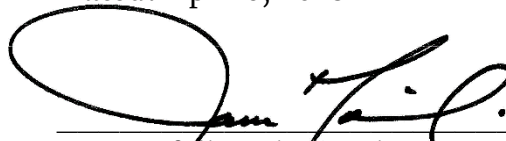
**B. The Existing Appellate Record Addresses the Issue
Comprehensively**

The existing appellate record contains a significant portion of the legislative history of section 226, including Assembly Bills 276, 1744, 2509, 3731, and Senate Bill 1255. Additionally, the record exists as a hyperlinked e-Brief, which increases the ease with which the record can be navigated.

CONCLUSION

Naranjo reaffirmed the proper interpretation and application of this State’s remedial worker protection framework. The Court of Appeal’s Opinion on remand adopting a heightened standard of intentionality for section 226 challenges that framework. The case remains well-suited for this Court’s consideration and the resulting conflict from the Court of Appeal opinion invites scrutiny. Accordingly, Representative Plaintiff Gustavo Naranjo respectfully urges this Honorable Court to grant review in this matter.

Dated: April 6, 2023



Respectfully Submitted
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Gustavo Naranjo

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c)(1) of the California Rules of Court, the undersigned counsel for Respondent and Cross-Appellant certifies that this opening brief contains 4,871 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 7th day of April, 2023.

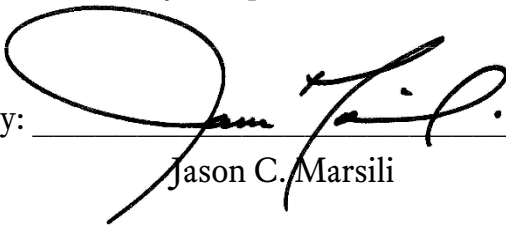
By:  _____
Jason C. Marsili

EXHIBIT A

FILED

Feb 27, 2023

EVA McCLINTOCK, Clerk

B. Rosales Deputy Clerk

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

GUSTAVO NARANJO et al.,

Plaintiffs and Appellants,

v.

SPECTRUM SECURITY
SERVICES, INC.,

Defendant and Appellant.

B256232

(Los Angeles County

Super. Ct. No. BC372146)

APPEAL and cross-appeal from a judgment of the Superior Court of Los Angeles County, Barbara Marie Scheper, Judge. Affirmed in part and reversed in part with directions.

Rosen Marsili Rapp, Howard Z. Rosen, Jason C. Marsili and Brianna Primozic Rapp for Plaintiffs and Appellants.

Duane Morris, Robert D. Eassa, Paul J. Killion, Sarah A. Gilbert; Tremblay Beck Law and David Carothers for Defendant and Appellant.

INTRODUCTION

In California, if an employer unlawfully makes an employee work during all or part of a meal or rest period, the employer must pay the employee an additional hour of pay. (Lab. Code¹, § 226.7, subd. (c).) In *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444 (*Naranjo II*), we held, as relevant here, that this extra pay for missed breaks (commonly referred to as “premium pay”) does not constitute “wages” that must be reported on statutorily required wage statements during employment (§ 226) and paid within statutory deadlines when an employee leaves the job (§ 203). The Supreme Court reversed this portion of our holding, concluding: “Although the extra pay is designed to compensate for the unlawful deprivation of a guaranteed break, it also compensates for the work the employee performed during the break period. [Citation.] The extra pay thus constitutes wages subject to the same timing and reporting rules as other forms of compensation for work.” (*Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93, 102.)

The Supreme Court then remanded the matter to this court to resolve two issues the parties addressed in their respective appeals, but that we did not reach based on our conclusion about the nature of missed-break premium pay: (1) whether the trial court erred in finding Spectrum Security Services, Inc. (Spectrum) had not acted “willfully” in failing to timely pay employees premium pay (which barred recovery under § 203); and (2) whether Spectrum’s failure to report missed-break premium pay on wage statements was “knowing and intentional,”

1 All further undesignated statutory references are to the Labor Code.

as is necessary for recovery under section 226. (*Naranjo v. Spectrum Security Services, Inc.*, *supra*, 13 Cal.5th at p. 126.)

After receiving supplemental briefing following remand, we conclude as follows: (1) substantial evidence supports the trial court’s finding that Spectrum presented defenses at trial—in good faith—for its failure to pay meal premiums to departing employees and therefore, Spectrum’s failure to pay meal premiums was not “willful” under section 203; and (2) because an employer’s good faith belief that it is in compliance with section 226 precludes a finding of a knowing and intentional violation of that statute, the trial court erred by awarding penalties, and the associated attorneys’ fees, under section 226.

FACTUAL AND PROCEDURAL BACKGROUND

We set forth the factual and procedural background as outlined by the Supreme Court and *Naranjo II*. We limit our recitation of the facts to those relevant to the issues on remand.

“[Spectrum], provides secure custodial services to federal agencies. The company transports and guards prisoners and detainees who require outside medical attention or have other appointments outside custodial facilities. [Citation.] Plaintiff Gustavo Naranjo was a guard for Spectrum. Naranjo was suspended and later fired after leaving his post to take a meal break, in violation of a Spectrum policy that required custodial employees to remain on duty during all meal breaks. [Citation.]

“Naranjo filed a putative class action on behalf of Spectrum employees, alleging that Spectrum had violated state meal break requirements under the Labor Code and the applicable Industrial Welfare Commission (IWC) wage order. (Lab. Code, § 226.7; IWC wage order No. 4-2001, § 11.) The complaint sought an additional hour of pay—commonly referred to as ‘premium pay’—

for each day on which Spectrum failed to provide employees a legally compliant meal break. (See Lab. Code, § 226.7, subd. (c); IWC wage order No. 4-2001, §§ 11(B), 12(B).)

“Naranjo’s complaint also alleged two Labor Code violations related to Spectrum’s premium pay obligations. According to the complaint, Spectrum was required to report the premium pay on employees’ wage statements (Lab. Code, § 226) and timely provide the pay to employees upon their discharge or resignation (*id.*, §§ 201, 202, 203), but had done neither. The complaint sought the damages and penalties prescribed by those statutes (*id.*, §§ 203, subd. (a), 226, subd. (e)(1)) as well as prejudgment interest.

“The trial court initially granted summary judgment in favor of Spectrum on federal law grounds not relevant here, but the Court of Appeal reversed. ([*Naranjo v. Spectrum Security Services, Inc.* (2009) 172 Cal.App.4th 654, 663-669 (*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 [three] stages.” (*Naranjo v. Spectrum Security Services, Inc., supra*, 13 Cal.5th at pp. 102-103, fns. omitted.)

The first phase was a bench trial involving several of Spectrum’s affirmative defenses. Specifically, Spectrum argued state labor laws do not apply to the class members because they were working on federal enclaves and/or performing federal functions such that they should be treated as federal employees. After hearing witness testimony, including testimony from Spectrum’s vice-president and personnel manager, John Oden, and expert testimony regarding the federal enclave doctrine, the trial court held “Spectrum . . . failed to carry its burden to establish any of these defenses.”

In the second phase of trial, “the meal break class cause of action was tried to a jury.” (*Naranjo II, supra*, 40 Cal.App.5th at p. 455.) Under the governing IWC wage order, an employer ordinarily must provide covered employees an off-duty meal period on shifts lasting longer than five hours. (IWC wage order No. 4-2001, § 11(A); see *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1034 (*Brinker Restaurant Corp.*.) An exception to this requirement allows for “on duty” meal periods if “the nature of the work prevents an employee from being relieved of all duty,” but only when “by written agreement between the parties an on-the-job paid meal period is agreed to.” (IWC wage order No. 4-2001, § 11(A); see *Brinker Restaurant Corp.*, at p. 1035.) Naranjo did not dispute that Spectrum had always required on-duty meal periods as company policy because of the nature of its guards’ work but argued that Spectrum did not have a valid written on-duty meal break agreement with its employees. Agreeing with Naranjo that Spectrum had no valid agreement for part of the class period, the court directed a verdict for the plaintiff class on the meal break claim for the period from June 2004 to September 2007. A jury found Spectrum not liable for the period beginning on October 1, 2007, after Spectrum had circulated and obtained written consent to its on-duty meal break policy.

“The court then considered the related wage statement and timely payment claims. The court concluded that the obligation to supply meal break premium pay also carried with it reporting and timing obligations. Whether Spectrum was monetarily liable for failure to abide by those obligations depended on its state of mind: The wage statement statute authorizes damages and penalties only for ‘knowing and intentional’ violations and

excuses ‘isolated and unintentional payroll error due to a clerical or inadvertent mistake’ (Lab. Code, § 226, subd. (e)(1), (3)), while the timely payment statutes impose penalties only for ‘willful[]’ failures to make payment (*id.*, § 203, subd. (a)).” (*Naranjo v. Spectrum Security Services, Inc.*, *supra*, 13 Cal.5th 93 at pp. 103-104.)

The trial court concluded Spectrum’s wage statement omissions were “knowing and intentional” and awarded penalties under section 226. The parties stipulated the section 226 penalty was \$399,950. The trial court also awarded attorneys’ fees, which are expressly authorized under section 226, to class counsel. The court denied waiting time penalties under section 203, however, concluding the failure to make timely payment was not willful. The trial court found a good faith dispute existed regarding whether meal premiums were due; thus, it held the failure to pay was not willful: “Spectrum’s defenses presented in the first phase of the trial . . . if successful, would have defeated plaintiffs’ claims in their entirety. Although the court ultimately ruled against Spectrum, . . . the defenses were presented in good faith and were not unreasonable or unsupported by the evidence.”

Based on these findings, and the jury’s findings in the second phase of trial, the trial court entered judgment for the plaintiff class on the meal break and wage statement claims, and awarded attorneys’ fees under section 226 and prejudgment interest at a rate of 10 percent. (*Naranjo v. Spectrum Security Services Inc.*, *supra*, 13 Cal.5th at p. 104.)

Both sides appealed. As relevant here, in *Naranjo II*, we affirmed the trial court’s determination that Spectrum had violated the meal break laws during the period from June 2004 to September 2007 (*Naranjo II*, *supra*, 40 Cal.App.5th at pp. 455,

457-463) but reversed the court's holding that a failure to pay meal break premiums could support claims under the wage statement and timely payment statutes (*id.* at pp. 463-476).

Naranjo then petitioned the California Supreme Court for review of the following issues: (1) whether a violation of section 226.7, which requires payment of premium wages for meal and rest period violations, gives rise to claims under sections 203 and 226 when the employer does not include the premium wages in the employee's wage statements; and (2) the applicable prejudgment interest rate for unpaid premium wages owed under section 226.7. The Supreme Court granted review. With respect to section 203 penalties, the Supreme Court held: "[M]issed-break premium pay constitutes wages for purposes of . . . section 203, and so waiting time penalties are available under that statute if the premium pay is not timely paid." (*Naranjo v. Spectrum Security Services, Inc.*, *supra*, 13 Cal.5th at p. 117.) Similarly, with respect to section 226 penalties, the Supreme Court held "an employer's obligation under . . . section 226 to report wages earned includes an obligation to report premium pay for missed breaks. This means that . . . failure to report premium pay for missed breaks can support monetary liability under section 226 . . ." (*Naranjo v. Spectrum Security Services, Inc.*, at p. 121.) Thus, the Supreme Court concluded "[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 the relevant conditions for imposing penalties are met." (*Naranjo v. Spectrum Security Services, Inc.*, at p. 125.) Whether those conditions had been met, however, had not been addressed in *Naranjo II*. The Supreme Court, therefore,

remanded the case to our court 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[.]” (*Naranjo v. Spectrum Security Services, Inc.*, at p. 126.)

Following remand, the parties submitted supplemental briefing to address relevant caselaw since the close of the parties’ original briefing.

DISCUSSION

A. Substantial Evidence Supports the Trial Court’s Finding that Spectrum’s Failure to Pay Meal Period Premium Wages Was Not “Willful” for Purposes of Section 203

Section 203, subdivision (a) provides, in relevant part: “If an employer willfully fails to pay, without abatement or reduction, in accordance with [statutory deadlines], any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

“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. However, a good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203. [¶] (a) A ‘good faith dispute’ that any wages are due occurs when an employer presents a defense, based in law or fact which,

if successful, would preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist. Defenses presented which, under all the circumstances, are unsupported by any evidence, are unreasonable, or are presented in bad faith, will preclude a finding of a ‘good faith dispute.’” (Cal. Code Regs., tit. 8, § 13520 (regulation 13520).)

Naranjo first contends regulation 13520 applies only to administrative hearings before the Labor Commissioner, and not to civil lawsuits between private parties. He does not dispute the Division of Labor Standards Enforcement (DLSE) had express legislative authority to promulgate regulation 13520 to interpret the meaning of “willful” as used in section 203. (See § 55 [the Director of the Department of Industrial Relations may “make rules and regulations that are reasonably necessary to carry out the provisions of this chapter and to effectuate its purposes.”]; see also § 98.8 [“The Labor Commissioner shall promulgate all regulations and rules of practice and procedure necessary to carry out the provisions of this chapter.”].) Nor does Naranjo dispute that properly adopted regulations “have the force and effect of law.” (*In re Lomax* (1998) 66 Cal.App.4th 639, 643.) He nevertheless argues that the application of regulation 13520 to civil litigation constitutes an “invalid extension of regulatory authority.” We disagree.

“Government Code section 11342.2 provides: ‘Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, *no regulation adopted is valid or effective unless consistent and not in conflict with the statute* and reasonably necessary to effectuate

the purpose of the statute.’ (Italics added.) ‘Administrative regulations that alter or amend the statute or enlarge or impair its scope are void and courts not only may, but it is their obligation to strike down such regulations.’” (*Pulaski v. Occupational Safety & Health Stds. Bd.* (1999) 75 Cal.App.4th 1315, 1341.)

Naranjo fails to point to any purported conflict between regulation 13520 and section 203. That is because there is no conflict; rather, the regulation defines a term in a statute that is not defined in the statute itself. Indeed, before the adoption of regulation 13520, the Court of Appeal in *Barnhill v. Robert Saunder & Co.* (1981) 125 Cal.App.3d 1, 8-9 (*Barnhill*) concluded the employer’s violation was not “willful” within the meaning of section 203 because the employer had a good faith belief it complied with the law at the time final wages were due given the state of the law was not clear. Thus, regulation 13520 simply memorialized the holding in *Barnhill* by clarifying that a good faith dispute any wages are due will preclude imposition of waiting time penalties under Section 203. (See *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201 (*Amaral*) [*“Barnhill’s holding was memorialized in California Code of Regulations, title 8, section 13520.”*].)²

² We note that, over 40 years before *Barnhill*, the court in *Davis v. Morris* (1940) 37 Cal.App.2d 269, 274, similarly recognized that a good faith dispute over whether any wages were due would be a defense to a claim for section 203 penalties: “It was the sole province of the trial court to determine whether the defendants were in good faith in claiming that wages were not due because the plaintiff contributed his services as a member of the partnership. That issue was decided against them.”

Moreover, since its adoption in 1988, courts have repeatedly relied on regulation 13520 to define “willfully” in section 203. (See, e.g., *Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.app.5th 859, 869-870 [applying regulation 13520 to determine whether the employer’s failure to pay timely wages was “willful” under section 203]; *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, 1331-1332 [same]; *Amaral, supra*, 163 Cal.App.4th at pp. 1201-1204 [same]; *Choate v. Celite Corp.* (2013) 215 Cal.App.4th 1460, 1468 [same].)³ We see no reason to depart from these authorities. We therefore turn to Naranjo’s alternative contention that the trial court’s finding of a good faith dispute is not supported by substantial evidence.

When a party raises a substantial evidence challenge, a reviewing court begins with the “presumption that the record contains evidence to sustain every finding of fact.” (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.) To overcome the trial court’s factual findings, Naranjo must “demonstrate that there is *no* substantial evidence to support the challenged findings.’ Accordingly, if . . . ‘some particular issue of fact is not sustained, [Naranjo is] required to set forth in [his] brief *all* the material evidence on the point and *not merely [his] own evidence*. Unless this is done the error is deemed to be [forfeited].” (*Id.* at p. 881, original italics.)

³ Our Supreme Court has also recognized that regulation 13520 defines the standard for “willful” in section 203. (See *Smith v. Rae-Venter Law Group* (2002) 29 Cal.4th 345, 354, fn. 3, superseded by statute on other grounds [quoting regulation 13520 for the proposition that a good faith dispute that any wages are due will preclude an award of waiting time penalties under section 203].)

Applying these principles, we conclude Naranjo forfeited his substantial evidence claim. Naranjo fails to point to *any* evidence in the record that may have supported the trial court’s finding that Spectrum’s “defenses were presented in good faith and were not unreasonable or unsupported by the evidence.” Instead, Naranjo relies solely on excerpts of the Statement of Decision which, Naranjo claims, are inconsistent with the trial’s court’s finding of a good faith dispute. Specifically, Naranjo argues the following statements in the Statement of Decision cannot be “reconciled” with a finding of good faith: (1) “The court finds that Spectrum has failed to carry its burden to establish any of these [federal] defenses”; (2) “Spectrum failed to prove that any of its activities take place on federal enclaves and there was no evidence whatsoever suggesting direct regulation of the federal government or discrimination against the federal government by way of California labor laws”; and (3) “But this position is not supported by the evidence admitted at trial.” We are unpersuaded. As noted above, only defenses which are “unsupported by *any* evidence” preclude a finding of a good faith dispute. (Cal. Code Regs., tit. 8, § 13520, emphasis added.) The trial court’s statements in the Statement of Decision that Spectrum did not meet its burden to prove its affirmative defense, or that its position was not supported by evidence admitted at trial, is not the same as a finding that a defense is “unsupported by any evidence” or “unreasonable.” Rather, those statements support the trial court’s findings in favor of Naranjo on Spectrum’s affirmative defenses. “The fact that a defense is ultimately unsuccessful[, however,] will not preclude a finding that a good faith dispute did exist.” (Cal. Code Regs., tit. 8, § 13520.)

Moreover, even if Naranjo preserved his substantial evidence contention, the Statement of Decision and a review of the record demonstrate a reasonable trier of fact could conclude Spectrum presented defenses in good faith. For example, Spectrum argued that because its officers perform much of their work at locations owned by the federal government, the federal enclave doctrine prohibits the application of state law, including labor laws, to employees working at such locations.⁴ In support of this defense, during phase one of trial, Spectrum offered the testimony of Donald Hensel regarding the ownership of seven properties. In response, Naranjo offered the testimony of Roger Haines who was qualified as an expert on the federal enclave doctrine. Based on the testimony of both witnesses, the trial court identified three properties that may be partly or wholly a federal enclave. With respect to the first property, both witnesses agreed a portion of the property was owned by the federal government prior to 1940, but neither witness could determine which portion of the property. Regarding the second property, both witnesses agreed it was a federal enclave but the court concluded

4 “A federal enclave is land over which the federal government exercises legislative jurisdiction.” (*Taylor v. Lockheed Martin Corp.* (2000) 78 Cal.App.4th 472, 478.) “An enclave is created when the federal government purchases land within a state with the state’s consent, which may be conditioned on the retention of state jurisdiction consistent with the federal use.” (*Ibid.*) After 1940, any property acquired by the federal government is conclusively presumed not to be a federal enclave unless and until the federal government accepts jurisdiction over the land. (40 U.S.C. § 3112; see also *Doe v. Camp Pendleton v. Quantico Hous. LLC* (C.D. Cal., Apr. 16, 2020, No.: 20-cv-224-GPC-AHG) 2020 U.S. Dist. LEXIS 67104, at *12.)

“testimony also indicated that this specific location was no longer in use.” Finally, the witnesses again agreed that a third property was a federal enclave, but that the state ceded concurrent jurisdiction over that location. Based on this evidence, the court found Spectrum “failed to carry its burden to establish that any of the locations at issue are federal enclaves over which the federal government asserts exclusive jurisdiction such that state law does not apply” That the defense was ultimately unsuccessful, however, does “not preclude a finding that a good faith dispute did exist.” (Cal. Code Regs., tit. 8, § 13520.)

In addition to its federal enclave defense, Spectrum also argued state regulation does not apply to Spectrum officers without express congressional authorization under the intergovernmental immunity doctrine. In its trial brief, Spectrum cited case law for the proposition that “a federally owned facility performing a federal function is shielded from direct state regulation, even though the federal function is carried out by a private contractor, unless Congress clearly authorizes such regulation.” During the first phase of trial, Spectrum offered the testimony of Spectrum’s vice president and personnel manager, John Oden. He testified “Spectrum guards federal prisoners or detainees from the time they’re taken from the agency until the time they’re returned.” He further testified that “all of the contracts that Spectrum works under are with federal agencies” and “the contracts with the federal agencies give [Spectrum guards] the authority to take custody of the prisoners that [Spectrum] guard[s].” The record demonstrates, therefore, that Spectrum’s defenses were not “unsupported by any evidence.” Rather, the trial court, after weighing the evidence presented at trial and reviewing the law in the parties’ respective trial briefs,

held Spectrum “has not carried its burden on the facts or the law as to the affirmative defenses that [had been] adjudicated or were presented to the court in this phase of the proceedings.”

Accordingly, we conclude substantial evidence supports the trial court’s finding that Spectrum’s defenses were presented in good faith, and were not unreasonable or unsupported by the evidence. The trial court, therefore, properly denied waiting time penalties under section 203 based on its finding that Spectrum did not “willfully” fail to pay timely wages.

B. Spectrum’s Failure to Include Meal Premium Pay on Employees’ Wage Statements Was Not “Knowing and Intentional”

Section 226, subdivision (a) requires employers to provide wage statements to employees with specific items of information listed in the statute. “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a)” is entitled to recover the greater of actual damages or statutory penalties. (§ 226, subd. (e)(1).)

It is “undisputed that Spectrum neither paid [] premium pay nor reported it as earned on employee wage statements.” (*Naranjo v. Spectrum Security Services, Inc.*, *supra*, 13 Cal.5th at p. 105.) Naranjo argues Spectrum’s failure to include premium pay on wage statements was “knowing and intentional” because Spectrum was aware of the factual predicate underlying the violation, i.e., that premium pay was not reported on employee wage statements (because Spectrum did not pay the meal break class members premium pay). Spectrum counters that the failure to include premium pay on the wage statements was not “knowing and intentional” because Spectrum had a good faith belief it was not in violation of section 226. The issue here

therefore turns on whether the “willful” standard in section 203 is the same as the “knowing and intentional” standard in section 226, such that a “good faith dispute” defense should apply to claims for penalties under both sections. For the reasons discussed below, we conclude an employer’s good faith belief that it is not violating section 226 precludes a finding of a knowing and intentional violation.

The words “knowing and intentional” in section 226, subdivision (e) are not specifically defined, except that the phrase does not include a “clerical or inadvertent mistake.” (See § 226, subd. (e)(3) [“For purposes of this subdivision, a ‘knowing and intentional failure’ does not include an isolated and unintentional payroll error due to a clerical or inadvertent mistake.”].) Our Supreme Court’s decision in *In re Trombley* (1948) 31 Cal.2d 801 (*Trombley*), however, provides guidance. There, the *Trombley* court linked the “knowing and intentional” standard to a “willfulness” standard. (*Id.* at pp. 807-808.) It held section 216, which criminalizes willful failures to pay wages, was constitutional because of the “willfulness” limitation.⁵ (*Trombley, supra*, 31 Cal.2d at pp. 807-808.) The *Trombley* court explained: “Subdivision (a) [of section 216] construed together with the Penal Code definition of the word ‘willful,’ makes it a crime for an employer having the ability to pay, *knowingly and intentionally* to refuse to pay wages which he knows are due. A similar construction was placed on section 203 of the Labor Code which imposes penalties where an employer ‘willfully fails to pay . . .

⁵ Section 216, subdivision (a) provides, in relevant part: A person is guilty of a misdemeanor who “[h]aving the ability to pay, willfully refuses to pay wages due and payable after demand has been made.”

wages of an employee who is discharged or who quits.’ In interpreting that section, it was recognized that a dispute in good faith as to whether any wages were due would be a defense to an action for such penalties. (*Davis v. Morris* (1940) 37 Cal.App.2d 269.) Subdivision (a), therefore, does not, as contended by petitioner, make the mere failure to pay wages a crime, nor does it subject an employer to imprisonment who disputes in good faith an employee’s claim for wages.” (*Trombley, supra*, 31 Cal.2d at pp. 807-808, italics added.)

Other courts have also defined “willful” in section 203 to mean “intentionally.” “As used in section 203, ‘willful’ . . . means that the employer intentionally failed or refused to perform an act *which was required to be done*.” (*Barnhill, supra*, 125 Cal.App.3d at p. 7, original italics; see also *Amaral, supra*, 163 Cal.App.4th at p. 1201 [“The settled meaning of ‘willful,’ as used in section 203, is that an employer has intentionally failed or refused to perform an act that was required to be done.”].)

Moreover, although district courts in California are divided on the question, the majority view is that an employer’s good faith belief it is not violating the California Labor Code precludes a finding of a knowing and intentional violation. (See, e.g., *Oman v. Delta Air Lines, Inc.* (C.D. Cal., July 8, 2022, No. 15-cv-00131-WHO) 2022 U.S. Dist. LEXIS 184423, at *30-31 [collecting cases]; *Arroyo v. Int’l Paper Co.* (N.D. Cal., Feb. 24, 2020, No. 17-cv-06211-BLF) 2020 U.S. Dist. LEXIS 32069, at *38-39, original emphasis [finding persuasive those decisions holding that an employer’s good faith belief that it is in compliance with section 226 precludes liability under that statute because to do otherwise would “read out of [section] 226[,subdivision] (e) the mental state implicated by the phrase ‘knowing and intentional’”]; *Utne v.*

Home Depot U.S.A., Inc. (N.D. Cal., July 11, 2019, No. 16-cv-01854-RS) 2019 U.S. Dist. LEXIS 115648, at *16 [noting the “‘knowing and intentional’ standard applicable to [s]ection 226 is closely related to the ‘willfulness’ standard which governs [s]ection 203” and “[g]iven the similarity between these two governing standards, it is only logical that the good faith defense would apply to both [s]ections, not merely to [s]ection 203”]; *Woods v. Vector Mktg. Corp.* (N.D. Cal., May 22, 2015, No. C-14-0264 EMC) 2015 U.S. Dist. LEXIS 67303, at *9 (*Woods*) [explaining “[t]he similarity between ‘knowingly and intentionally’ under [s]ection 226 and ‘willfully’ under [s]ection 203 with respect to their incorporation of a good faith dispute defense is consistent with the Labor Code generally for several reasons” including that “California courts have defined willful as intentional” and “the Labor Code itself treats ‘willful’ and ‘knowing and intentional’ violations with similar weight. Violations of [s]ection 203 and 226 both lead to civil penalties”]⁶; *Magadia v. Wal-Mart Associates, Inc.* (N.D. Cal. 2019) 384 F.Supp.3d 1058, 1081 [finding the “knowing and intentional” requirement of section 226 to be “akin” to the willfulness requirement of section 203].)

We are unpersuaded by the approach Naranjo advances, and that a minority of federal district courts have adopted, which is that “knowing and intentional” is a “minimal standard”

⁶ The *Woods* court also opined that “[i]t would seem ironic if the good faith dispute defense applied to [s]ection 203, which involves failure to timely pay wages, but not to [s]ection 226, which involves inaccurate wages statements. If anything, failure to pay wages would seem to warrant lesser tolerance of defenses than failing to provide accurate wage statements.” (*Woods, supra*, 2015 U.S. Dist. LEXIS 67303 at *12, fn.3.)

that may be satisfied by simply showing an employer provided an inadequate wage statement not as a result of clerical error or inadvertent mistake. (See *Greenlight Sys., LLC v. Breckenfelder* (N.D. Cal., June 28, 2021, No. 19-cv-06658-EMC) 2021 U.S. Dist. LEXIS 120288, at *39 “[F]or the minority view, ‘knowing and intentional’ simply requires ‘that the defendant knew . . . facts existed that brought its actions or omissions within the provisions of section 226[,subdivision](a) . . .’.”.) Rather, consistent with California precedent linking the “willfulness” standard to a “knowing and intentional” standard, we agree with the weight of authority that a good faith dispute over whether an employer is in compliance with section 226 precludes a finding of a knowing and intentional violation.⁷ To hold otherwise would “read out of [section] 226 [,subdivision] (e) the mental state implicated by the phrase ‘knowing and intentional.’” (*Arroyo v. Int’l Paper Co.*, *supra*, 2020 U.S. Dist. LEXIS 32069, at *39, original emphasis.)

⁷ We acknowledge *Furry v. East Bay Publishing, LLC* (2018) 30 Cal.App.5th 1072, 1085 (*Furry*) and *Kao v. Holiday* (2017) 12 Cal.App.5th 947, 962 (*Kao*) reject the application of a good faith defense to a claim for penalties under section 226 when employers argue ignorance of the law. (See *Furry*, *supra*, 30 Cal.App.5th at p. 1085 [rejecting the good faith defense to Labor Code section 226 “because it “stands contrary to the often repeated legal maxim: ‘ignorance of the law will not excuse any person, either civilly or criminally’”]; *Kao*, *supra*, 12 Cal.App.5th at 962 [finding that “a belief [that] amounts to a mistake of law . . . is not excused under the statute mandating itemized wage statements”].) Here, 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 case applicable.

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 not only precludes a “willfulness” finding under section 203, but also a “knowing and intentional” finding under section 226.⁸ The trial court therefore erred by awarding penalties under section 226 based on its conclusion that the omission of the premium pay on employees’ wage statements was “knowing and intentional” because it was “not inadvertent[.]” Because Naranjo was not entitled to section 226 penalties, the attorneys’ fees awarded pursuant to that statute also must be reversed.⁹

DISPOSITION

Following remand from the Supreme Court, the disposition remains unchanged from the disposition contained in our opinion filed September 26, 2019: “That portion of the judgment awarding the meal break subclass premium wages, but denying section 203 penalties, is affirmed. The portion of the judgment assessing section 226 penalties and awarding the meal break subclass attorney fees is reversed. The meal break subclass

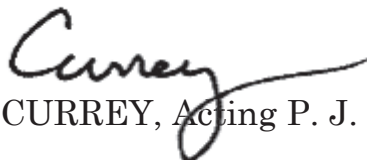
⁸ In addition to the trial court’s finding that a good faith dispute existed regarding whether premium pay was owed, we also note there was a good faith dispute regarding whether premium pay constituted “wages” that must be reported on wage statements. That issue was not resolved until our Supreme Court’s 2022 decision. (See *Naranjo v. Spectrum Security Services, Inc.*, *supra*, 13 Cal.5th at p. 102.)

⁹ Class counsel did not ask for attorneys’ fees under any other statute. (*Naranjo II*, *supra*, 40 Cal.App.5th at p. 474, fn. 12.)

is entitled to prejudgment interest on the premium wages award at the rate of seven percent. The interlocutory order denying certification of a rest break class is reversed. The matter is remanded to the trial court with directions to award prejudgment interest at seven percent on the premium wages award and to certify a rest break class.

“In the interests of justice, the meal break subclass and Naranjo are awarded costs on appeal.” (*Naranjo II, supra*, 40 Cal.App.5th at p. 481.)

CERTIFIED FOR PUBLICATION


CURREY, Acting P. J.

We concur:


COLLINS, J.


LAVIN, J.*

* Justice of the Court of Appeal, Second Appellate District, Division Three, assigned to Division Four, by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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County of Los Angeles)
)

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