IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

ALEKSANDR VASILENKO, et al.,

Plaintiffs and Appellants,

v.

GRACE FAMILY CHURCH,

Defendant and Respondent.

Supreme Court
No. S235412

Court of Appeal
No. C074801

Sacramento County
No. 34201100097580

ANSWER TO PETITION FOR REVIEW

TORRANO LAW
Frank J. Torrano, State Bar No. 166558
431 "I" Street, Suite 201
Sacramento, CA 95814
(916) 801-5577
Email: frank@torranolaw.com

JARAMILLO & BORCYCKOWSKI, LLP
Robert D. Borcyckowski, State Bar No. 133593
3620 American River Drive, Suite 220
Sacramento, CA 95864
(916) 576-0218
Email: robert@bojarlaw.com

Attorneys for Plaintiffs and Appellants
ALEKSANDR VASILENKO and LARISA VASILENKO

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Frank J. Torrano, State Bar No. 166558
431 "I" Street, Suite 201
Sacramento, CA 95814
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Email: frank@torranolaw.com

JARAMILLO & BORCYCKOWSKI, LLP
Robert D. Borcyckowski, State Bar No. 133593
3620 American River Drive, Suite 220
Sacramento, CA 95864
(916) 576-0218
Email: robert@bojarlaw.com

Attorneys for Plaintiffs and Appellants
ALEKSANDR VASILENKO and LARISA VASILENKO

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ANSWER TO PETITION FOR REVIEW

INTRODUCTION

Plaintiffs and appellants Aleksandr Vasilenko and Larisa Vasilenko respectfully request this court to deny the defendant's petition for review.

Review should be denied because the Court of Appeal's decision results from a well-reasoned, correct, and appropriate application of: (1) Civil Code section 1714, subdivision (a), stating the fundamental rule that "[e]veryone" owes a duty of ordinary care "in the management of his or her property or person"; (2) the California Supreme Court's declaration that there should be no exceptions to the duty rule "unless clearly supported by public policy" after "balancing a number of considerations" (*Rowland v. Christian* (1968) 69 Cal.2d 108, 112); and (3) Supreme Court and Court of Appeal decisions that have applied those standards in circumstances similar to those found here.

Review should also be denied because: (1) defendant's legal analysis relies on purported facts that are not supported by the record; (2) the Issue Presented is not amenable to resolution under the instant facts; and (3) the Court of Appeal judgment can be affirmed on the alternative ground that defendant voluntarily undertook a duty toward Mr. Vasilenko, such that this court cannot grant defendant any meaningful relief.

FACTUAL BACKGROUND

The factual recitation in the petition understates the extent of defendant's conduct resulting in plaintiffs' injuries. (Pet., pp. 5-6.) The Court of Appeal decision aptly summarizes the factual and procedural background. (Court of Appeal maj. opn. ["Opn."], pp. 1-4.) Of necessity, however, the decision did not recite all of the numerous negligent acts and omissions of defendant that caused Mr. Vasilenko to be struck by a car while crossing the five-lanes of a dangerous and unregulated stretch of Marconi Avenue while returning to defendant's church from the defendant's overflow parking lot. (Opn., p. 3.) Some of the most pivotal facts are as follows.[1]

The traffic on Marconi Avenue typically moves at 50 to 55 miles per hour. (AOB 6) Root Avenue intersects Marconi east of the church; there is no signal or marked crosswalk at the intersection. (AOB 5-6) Prior to the subject incident, defendant located its leased overflow parking lot midblock at the Debbie Meyer Swim Center on the opposite side of Marconi from its church. (AOB 7)

Defendant chose to establish an overflow lot at the swim center even though it knew it was very dangerous for lot users to walk across

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[1] For clarity, most factual citations in this part of the Answer are to the Court of Appeal slip opinion and appellants' and respondent's briefs in the Court of Appeal, rather than to the appellate record. Where the parties' briefs are cited, those pages of the briefs contain pinpoint cites to the record.

Marconi to return to the church, either at Root Avenue or, even more perilously, midblock by the shortest route directly from the overflow lot to the church. (AOB 8, 10; Opn., p. 3) Defendant also knew it was common for users of the overflow lot, including families, to cross midblock. (AOB 9)

Mr. Vasilenko was hit by a car in the midst of his very first visit to defendant's premises. (AOB 8, fn. 3.) At least seven of defendant's volunteer parking attendants were on duty the night Mr. Vasilenko was struck. (AOB 9-11) Defendant equipped its attendants with brightly-colored vests, walkie-talkies, and flashlights; stationed them in its main parking lot and overflow lot, as well as on public property; and tasked them with (1) telling invitees where to park their cars and (2) instructing invitees on how and where to cross Marconi Avenue most safely. (AOB 9-10) Defendant failed to provide the attendants with proper training, however. (AOB 9; Opn., pp. 3, 14-15.)

When Mr. Vasilenko arrived inside defendant's main church parking lot, an attendant told him that because the main lot was full he would " 'need to go and park your car across the street at the swimming pool' " and " 'you need to follow direction [*sic*] and here is map [*sic*] and just park your car across the street in the swimming pool area.' " (AOB 11-12) The same attendant handed Mr. Vasilenko a map entitled "GFChurch Parking Regulations" that showed him how to

drive to the swim center lot he was directed to use. (Figure 1, *post*; AOB 6, Fig. 1; AOB 10; ARB 5.)

The map identified three parking lots – the main lot and two overflow lots – each prominently labeled with a parking lot symbol (a white "P" on a dark square), and it illustrated, using arrows, how to drive from the main parking lot to the other two lots:

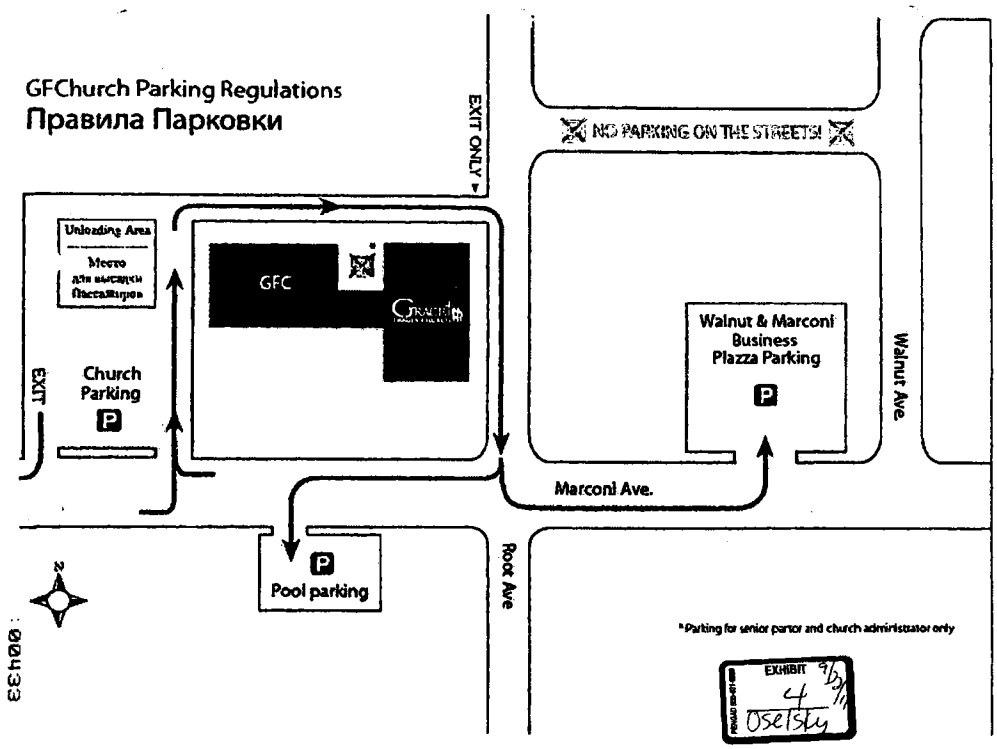


FIGURE 1

The second overflow lot depicted on the map was the large parking lot at the "Walnut & Marconi Business Plaza" on the same side of Marconi as the church. Defendant's invitees parking at the business plaza would not have needed to cross dangerous Marconi Avenue to return to the church.

In summary judgment proceedings at the trial court, defendant made the judicial admission that "unlimited" parking was available to Mr. Vasilenko at the business plaza. (AOB 11, ARB 6, 11) There is no evidence the attendant told Mr. Vasilenko the business plaza lot was unlimited or safer than the pool lot; plaintiff was only told he had to use the pool lot on the opposite side of Marconi. (AOB 11-12)

There were two attendants working in the pool lot when Mr. Vasilenko and other invitees arrived there, but they said nothing to the invitees about how or where to cross Marconi. (AOB 13) Plaintiff and the others attempted to cross directly from the overflow lot to the church. (AOB 13-14) It was dark and raining very hard. (AOB 13-15) Despite their diligent efforts to look for traffic in both directions, and after they had crossed four out of the five lanes, a car traveling 50 to 55 miles per hour hit Mr. Vasilenko. (AOB 14)

ARGUMENT

I.

THERE ARE NO GROUNDS FOR REVIEW BECAUSE THE DECISION CORRECTLY APPLIES SETTLED AND FUNDAMENTAL LAW TO THE INSTANT FACTS

Defendant errs in asserting that review of the issue presented is "necessary to secure uniformity of decision and to settle an important question of law." (Cal. Rules of Court, rule 8.500(b)(1); Pet., p. 7.) Neither ground for review applies here. There is no split of authority

that needs to be rectified, and the issue presented by these facts has long been resolved by well-established and unassailable California Supreme Court precedents and intermediate appellate court decisions consistent with them.

A. The Court of Appeal Decision Rests On Fundamental, Well-Reasoned, and Settled Law

Defendant characterizes its position as based on a supposed "axiomatic" principle (Pet., p. 7) and criticizes the Court of Appeal decision by asserting it misapplies the law (Pet., pp. 2, 3, 16). Simultaneously, however, defendant totally overlooks that the Court of Appeal decision did nothing more than straightforwardly apply, in the context of this specific defendant's numerous acts and omissions as established by the record, two concepts of California law that actually *are* unquestionable:

It is a first principle, enshrined at Civil Code section 1714, subdivision (a), that: "Everyone is responsible ... for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person...." (Opn., pp. 6, 13.) This is a principle of the civil law, not common law, and it is undeniably "fundamental." (*Rowland v. Christian* (1968) 69 Cal.2d 108, 112.)

Concomitant to the duty rule of section 1714(a) is the second fundamental proposition applied by the Court of Appeal: Absent a statutory exception to section 1714(a), no exception should be made

unless clearly supported by public policy after "balancing a number of considerations...." (*Rowland, supra,* 69 Cal.2d at p. 112, 113-114.)

Defendant's petition fails even to cite *Rowland v. Christian, supra,* 69 Cal.2d 108. Similarly, in both the trial court and Court of Appeal, defendant "made no attempt to apply the *Rowland* factors based on the mistaken belief that the place of Vasilenko's injury – a public street – was dispositive." (Opn., p. 9.) Under section 1714(a) and *Rowland,* it was not plaintiffs' burden to establish the duty, but the defendant's burden to negate it. (*Cabral v. Ralphs Grocery Co.* (2011) 51 Cal.4th 764, 771 & fn. 2.)

After failing to carry its burden below, defendant now seeks to kindle the perception of a conflict in the case law and cast doubt on settled law by asking this court in essence to ignore section 1714(a) and disregard the multifactor approach of *Rowland v. Christian, supra,* 69 Cal.2d 108, by focusing on *one fact* to the exclusion of all the other important circumstances: That its invitee was on a public street at the moment he was injured.

Defendant looks right past the very close connection between its own negligent conduct and the resulting tragedy (including the facts that only minutes earlier Mr. Vasilenko was physically present on *both* of defendant's premises – first the church property and then the overflow lot – and was injured while returning from the latter to the

former). In light of the specific facts of this case, the rule proffered by defendant is arbitrary in the extreme, and defies law and logic.

The legal reasoning, holding, and result in the Court of Appeal decision all: (1) proceed directly from controlling Supreme Court case law, and (2) are in harmony with prior Court of Appeal cases applying the same Supreme Court precedents. It held defendant had a duty to the plaintiffs because the deliberately chosen location of its overflow lot exposed invitees to an unreasonable risk of injury while attempting to cross Marconi Avenue. (Opn., p. 2.)

Specifically, the Court of Appeal decision applies section 1714(a); the Supreme Court decisions in *Rowland v. Christian, supra,* 69 Cal.2d 108, *Cabral v. Ralphs Grocery Co., supra,* 51 Cal.4th 764, and *Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139; and the Court of Appeal decisions in *Barnes v. Black* (1999) 71 Cal.App.4th 1473 and *Annocki v. Peterson Enterprises, LLC* (2014) 232 Cal.App.4th 32. (Opn., pp. 6, 8, 9-10.) The decision also cogently explains why the cases relied on by defendant are distinguishable. (Opn., pp. 7, 10-13.)

The crux of the Supreme Court's analysis in *Bonanno, supra,* 30 Cal.4th 139, particularly as it applies to the facts of the instant case, rests on the Supreme Court's earlier decision in *Schwartz v. Helms Bakery, Ltd.* (1967) 67 Cal.2d 232, on the basis of which *Bonanno*

distinguished *Seaber v. Hotel Del Coronado* (1991) 1 Cal.App.4th 481, the main case on which defendant relies. (RB 13; Pet., pp. 2, 10, 15)

As *Bonanno* explained, defendant there could have relocated its bus stop so that persons would not have to make a dangerous crossing in order to use it, such that "the case at bar is closer to those involving mobile places of business, such as *Schwartz v. Helms Bakery Limited* (1967) 67 Cal.2d 232 (bakery truck), than it is to *Seaber*...." (*Bonanno, supra,* 30 Cal.4th at p. 152.)

Bonanno observed that the *Schwartz* defendant was able to control " ' " ' "the places where he will do business, and thus, the avenues of approach to it." ' [Citations.]" Similarly, the existence of the bus stop and sign attracted patrons, beckoning them to cross.... And while [defendant] could not control traffic, it did control the location of the bus stop.... The solution was to move or eliminate the bus stop, a remedy that imposed no undue burden [on defendant].' " (*Bonanno, supra,* 30 Cal.4th at p. 152.) The same reasoning applies here.

Bonanno made another point significant to the instant analysis: "Nor is it determinative that Bonanno's injury occurred on adjacent County property as she approached the bus stop, rather than while she was awaiting the bus at the stop itself.... [T]hat Bonanno was injured trying to access [defendant's] property makes her *no less a user* of it. If [defendant's] bus stop could be reached only by jumping across an

adjacent ditch, [defendant] would logically bear the same liability to a patron who fell into the ditch attempting to reach the stop as to one who fell while waiting at the stop." (*Bonanno, supra,* 30 Cal.4th at p. 151.) This rationale also applies to the instant facts:

The location of defendant's overflow lot was not "fixed" at the swim center – defendant deliberately chose to put it there in the first place and kept using that location despite knowledge that it created a very significant risk to pedestrians returning to the church; it chose to open and use the swim lot on the night Mr. Vasilenko was struck instead of closing it when the conditions at the time (darkness and pouring rain) combined to increase greatly the risk of harm to users of the lot; it directed Mr. Vasilenko and other invitees to park *only* at the swim lot, requiring them to cross Marconi; and it undeniably could have easily "relocated" its overflow parking by sending invitees instead to safe parking at the business plaza on the same side of Marconi as the church. (ARB 15) Nor did its attendants warn invitees of any dangerous condition though the evidence showed they were instructed to do so.[2]

---

[2] Among the attendants' duties were informing the invitees who had parked at the pool lot "(1) to cross at the intersection of Marconi and Root (I CT 201, 266); and (2) not to cross straight from the pool parking to the church (I CT 201, 266). Attendants tell pedestrians to 'cross safely,' 'make sure there are no cars" (I CT 212), 'make sure it's safe and cross the street then' (I CT 266), and 'how to get across the street from the swim center to the church....' (II CT 539)[.]" (AOB 9-10)

Schwartz, supra, 67 Cal.2d 232 itself rested on *Johnston v. De La Guerra Properties, Inc.* (1946) 28 Cal.2d 394, which involved an injury to an invitee on property adjacent to defendant's *stationary* premises. (*Schwartz,* 67 Cal.2d at p. 239, citing *Johnston*, 28 Cal.2d at p. 401; RB 28.) *Johnston* held a landlord liable for an injury to its tenant's invitee (as a matter of law, also an invitee of the landlord) even though the injury occurred on property the landlord did not own, possess, or control because:

"[T]he invitation, and consequently the duty, of the invitor are sufficiently extensive to protect the business visitor in his use of such means of ingress and egress as by allurement or inducement, express or implied, he has been led to employ. [¶] The evidence is sufficient to support a finding that the defendant owner was negligent. It encouraged patrons of its tenants to park their cars on the adjoining property and approach the building by way of the private walk. It had knowledge of the condition which caused the accident, and a jury could find that defendant owner should have foreseen that patrons parking at night, and unaided by any lighting, might fail to discover the ramp, and, in attempting to gain entrance to the building, step onto the walk at a dangerous place. Under these circumstances, it cannot be said as a matter of law that defendant owner was not negligent in failing to light the premises, or provide guard rails, or otherwise to protect or warn

business invitees against the danger inherent in this particular approach." (*Johnston, supra,* 28 Cal.2d at p. 400-401.)

Compared to *Bonanno, supra,* 30 Cal.4th 139, *Schwartz, supra,* 67 Cal.2d 232, and *Johnston, supra,* 28 Cal.2d 394, the facts of the instant case even more strongly support a finding that defendant owed a duty to its invitee. Defendant not only owned the church premises its invitee was attempting to access, but also possessed and controlled the nearby overflow swim lot from which it compelled Mr. Vasilenko to approach the church. Defendant errs in asserting the reasoning of *Schwartz* does not apply here. (Pet. at p. 9.)

Refusing to accept the Supreme Court precedents just discussed, defendant seeks impunity to locate an overflow parking lot at the swim center and then direct invitees to use only that lot, regardless of the grave risk of harm resulting from those foreseeably dangerous actions. Defendant implies that one who owns, possesses, or controls premises may wash its hands of *any risk* it requires its invitees to encounter while attempting to enter or leave the premises, no matter how potentially deadly the hazard. Defendant's views are untenable.

B. Defendant Depends On Putative "Facts" That Are Contradicted by the Record

As to crucial factual matters, based on the undisputed and disputed facts in the record, the Court of Appeal majority recognized there was evidence that defendant "directed" (Opn. at p. 13) invitees to

use an overflow lot in a location that "required" them to cross Marconi Avenue. (Opn. at pp. 2, 9, 12, 13, 14).

Thus, the Court of Appeal rejected defendant's bare arguments that: (1) defendant merely "informed [Mr. Vasilenko] he could park across the street" (RB 2); (2) he "could park his car anywhere he chose other than in the full church-owned lot" (RB 3); (3) it was "undisputed that [he] could have parked anywhere he chose other than the church's owned lot" (RB 3); (4) defendant simply "provided a place to park" (RB 3); and (5) defendant "did not require [him] to park in a lot across the street" (RB 17).

None of the foregoing factual assertions by defendant were supported by the record, and all of them ignored the evidence that the attendant specifically instructed Mr. Vasilenko he "need[ed]" to park at the swim center lot on the other side of Marconi Avenue. (II CT 593, 595) The attendant did not provide him with a range of options, but indicated Mr. Vasilenko's *only choice* was to use that particular lot (which plaintiff, who was unfamiliar with the area, did not know would expose him to a serious risk of harm).

Defendant's reliance on unsupportable factual assertions shows this is not an appropriate case for review. Here, as in the Court of Appeal, defendant misapprehends the record and misallocates the

burdens controlling the resolution of the duty question, especially upon de novo review after a grant of summary judgment. (AOB 15-16)

C. Our Case Does Not Involve the Hypothetical Scenarios Defendant Has Constructed

This court should also deny review because the Issue Presented is not amenable to resolution under the actual facts in this record. Because of the straw men erected by defendant in its petition and at the Court of Appeal, it is important to emphasize what this case is *not* about. For example, in the Court of Appeal, defendant "offer[ed] the case of a downtown restaurant owner whose building does not offer any parking or a downtown law firm with limited onsite parking, prompting the owners to provide instructions about where visitors are able to park. Is there increased liability exposure if the business owners offer to validate for parking in another's lot?" (RB 12)

The Court of Appeal correctly responded that "[t]his is not simply a case where a business merely provided instructions about where to park; rather, this is a case where an entity maintained and operated a parking lot in a location that required its invitees to cross a busy thoroughfare *and* directed its invitees to that lot when its main lot was full." (Opn., p. 13, original italics.)

In the petition for review, defendant posits that the Court of Appeal decision imposed "a duty [on defendant] to take steps to protect [its invitees] against" the unreasonable risk of harm in having to cross

the street. (Pet., p. 1.) But that is not the duty at issue, and that is not what the Court of Appeal held or suggested. The problem here is, instead, that defendant *created* the danger to Mr. Vasilenko when it directed him to use the overflow lot at the swim center and required him to cross Marconi Avenue, even as a safe alternative existed at the business plaza lot.

Here, just as in *Bonanno*, "[t]he principle at work ... is not that property owners must 'ensure the safety of all persons who encounter nearby traffic-related hazards in reaching their property' (dis. opn. of Baxter, J.), but that public entities are subject to potential liability (not as insurers but *for their own negligence....*" (*Bonanno, supra,* 30 Cal.4th at p. 151, fn. 4.)

As stated in the Court of Appeal decision: "Vasilenko does not argue that 'where the parking provided on the landowner's premises was inadequate ..., the landowner should have foreseen that invitees would be forced to park in outlying areas and thus had a responsibility to insure safe egress and ingress.' Rather, Vasilenko's claim is that while GFC may not have had a duty to provide additional parking for its invitees, its maintenance and operation of an overflow parking lot in a location that it knew or should have known would induce and/or require its invitees to cross Marconi Avenue created a foreseeable risk

of harm to such persons." (Opn. at p. 12.) This mirrors the reasoning of *Bonanno.*

Thus, the purported duty as framed in the Issue Presented (Pet., p. 1) and restated variously elsewhere in the petition (Pet., pp. 1-5) is not the duty at issue in this case. Defendant overstates the point by claiming that a landowner who uses an off-site parking lot "now must guarantee the safety of all who make use of the adjacent lot across the street." (Pet., p. 4.)

Contrary to defendant's arguments (Pet., pp. 9-11, 15), the Court of Appeal decision imposes no duty on landowners to protect their invitees by possessing, managing, or controlling public streets, the traffic on those streets, or any other premises owned by others. Rather, the duty recognized by the Court of Appeal pertains only to the management of premises one *already* owns, possesses, manages, or controls (§1714(a) ["ordinary care or skill in the management of his or her property or person"] – and such "management" includes the decisions about where to *locate* those premises. (*Bonanno, supra,* 30 Cal.4th at p. 152 ["The solution was to move or eliminate the bus stop, a remedy that imposed no undue burden"].)

The fact defendant did not own, possess, or control Marconi Avenue is not a valid reason to immunize it for its *own conduct* in placing an overflow lot in a place creating an unreasonable risk of

harm to the lot's users. The absence of a duty or right to manage another's property does not absolve one from the duty to exercise due care in managing the property one *does* own, possess, or control.

It is also unavailing for defendant to argue it did not "force" Mr. Vasilenko to cross where he did (Pet. at p. 14); certainly, defendant *did* direct him to use the pool lot and therefore required him to undertake a dangerous crossing of Marconi Avenue (Opn., pp. 2, 9, 12, 13, 14) either at uncontrolled and unmarked Root Avenue or at the even more precarious midblock location that was "the most direct route to the church." (Opn., p. 3)

The acts and omissions of this defendant exceeded by far what any typical reasonable landowner or possessor would do or fail to do, and the harmful results of its conduct were highly foreseeable. The nature of the fact pattern here suggests this case is not the proper vehicle for adjudicating the question left open in *Alcaraz v. Vece* (1997) 14 Cal.4th 1149, 1153.

II.

WHETHER OR NOT A DUTY EXISTED IN THE FIRST PLACE, DEFENDANT VOLUNTARILY UNDERTOOK A DUTY TOWARD MR. VASILENKO

In the Court of Appeal, plaintiffs also argued defendant owed a duty to Mr. Vasilenko on the alternative theory a duty was created by defendant's voluntary undertaking. (AOB 47-50, ARB 7-10) Since the

Court of Appeal determined the usual duty under section 1714(a) existed, it did not reach the other theory. In any event, the alternative theory was also a valid basis for finding defendant owed a duty to Mr. Vasilenko.

"Firmly rooted in the common law lies the concept that although one individual need do nothing to rescue another from peril not of that individual's own making, nevertheless, '(h)e who undertakes to do an act must do it with reasonable care.' [Citations.] '(I)f the defendant enters upon an affirmative course of conduct affecting the interests of another, he is regarded as assuming a duty to act, and will thereafter be liable for negligent acts or omissions * * *.' [Citation.] 'If the conduct of the actor has brought him into a human relationship with another, of such character that sound social policy requires some affirmative action or some precaution on his part to avoid harm, the duty to act or take the precaution is imposed by law. * * * Where a person is under the special protection of another, the latter is bound to exercise reasonable care to prevent harm to him, and this duty may include protection from the dangerous conduct of third persons.' [Citations.]" (*Schwartz, supra,* 67 Cal.2d at pp. 238-239, fn. omitted.)

Defendant here voluntarily assumed a duty of care toward Mr. Vasilenko and other invitees by its affirmative course of conduct including, inter alia: (1) recruiting volunteer attendants; (2) posting

the attendants *off* of its premises, including at public street corners adjacent to its church and overflow lot, to help invitees safely cross Marconi Avenue; (3) having attendants direct the movement of cars and pedestrians on adjacent public property, including telling invitees on *public* sidewalks where and how safely to cross Marconi Avenue, a *public* street; (4) having attendants control Mr. Vasilenko's movements by telling him he "need[ed]" to park in the lot at the swim center and requiring him to make a dangerous crossing of Marconi Avenue; and (5) assigning attendants the task of telling persons using that overflow lot to cross at Root Avenue instead of midblock. (AOB 48-49, ARB 8-9)

Then, after defendant assumed the duty to act and placed Mr. Vasilenko under its special protection, defendant's attendants: (1) failed to assist him in crossing Marconi Avenue at either Root Avenue or directly from the overflow lot to the church; (2) failed to instruct him to cross at Root Avenue where other attendants might have helped him and others in some manner to cross Marconi Avenue; (3) increased the risk of harm to Mr. Vasilenko by ordering him to use the overflow lot knowing he would then likely attempt to cross midblock, the most dangerous spot and where no attendants were stationed; (4) breached their assigned duty to tell Mr. Vasilenko to cross only at Root Avenue; and (5) caused Mr. Vasilenko reasonably to rely on their instructions about where to park. (AOB 49-50, ARB 9-10)

The existence of this alternative and independent basis for defendant's duty toward Mr. Vasilenko provides yet another reason to deny review. This is because even if defendant were correct in arguing it did not owe Mr. Vasilenko the usual duty of care under section 1714(a) (a position that fails for the reasons stated in Part I of the Argument, *ante*), this court would have to conclude defendant *nonetheless* owed him the duty it voluntarily undertook.

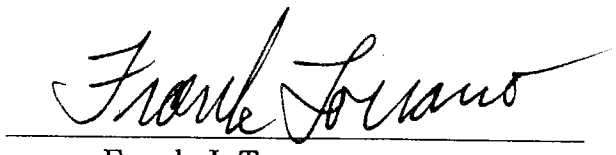
Thus, the Court of Appeal's judgment may very appropriately be affirmed on the alternative ground that a duty was created by this defendant's voluntary undertaking. (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 18-19 [court may affirm judgment on any theory supported by the record].) Under these circumstances, review should be denied on the ground that this court cannot grant defendant any meaningful relief.

CONCLUSION

The plaintiffs respectfully request this court to deny defendant's petition for review.

Respectfully Submitted,

Dated: August 7, 2016



Frank J. Torrano
State Bar No. 166558

CERTIFICATION OF WORD COUNT

Appellate counsel certifies, in accordance with California Rules of Court, rule 8.504(d)(1), that this document contains 4,601 words, as calculated by the Microsoft Word software in which it was written.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: August 7, 2016

Frank J. Torrano

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Paul A. de Lorimier, Esq. McKay, de Lorimier & Acain 3250 Wilshire Blvd., Suite 603 Los Angeles, CA 90010-1578 *Counsel for Defendant & Respondent*	Bradley S. Thomas, Esq. The Thomas Law Firm 1756 Picasso Ave., Suite A Davis, CA 95618 *Co-Counsel for Defendant & Respondent*
Robert D. Borcyckowski, Esq. Jaramillo & Borcyckowski 3620 American River Drive, Suite 220 Sacramento, CA 95864 *Co-Counsel for Plaintiffs & Appellants*	Russell A. Dalton, Jr., Esq. Law Office of Robert Kern P.O. Box 164 Pomona, CA 91769 *Depublication Requestor*
Hon. David I. Brown, Judge Sacramento County Superior Court 720 - Ninth Street Sacramento, CA 95814	California Court of Appeal Third Appellate District 914 Capitol Mall, 4th Floor Sacramento, CA 95814

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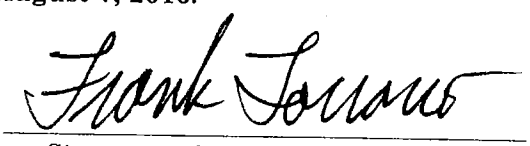
Frank J. Torrano
Name of Person Completing Form



Signature of Person Completing Form