Case No. S258966

In the

Supreme Court

of the

State of California

GUSTAVO NARANJO,
on behalf of himself and all others similarly situated,
Plaintiff and Respondent,

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

OPENING BRIEF ON THE MERITS

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ISSUES PRESENTED FOR REVIEW

1. Does violation of Labor Code section 226.7, which requires payment of premium wages for meal and rest period violations, give rise to claims under Labor Code sections 203 and 226 when the employer does not pay the premium wages at any time or include the premium wages in the employee's wage statements?

2. What is the applicable prejudgment interest rate for unpaid premium wages owed pursuant to Labor Code section 226.7?

INTRODUCTION

California's remedial worker protection framework has influenced legislative enactments governing wages, hours, and working conditions to benefit employees for over a century. Meal periods, rest periods, and the prompt payment of wages have long been considered fundamental to these protections, which the Legislature repeatedly reinforces through the enactment and amendment of provisions to the Labor Code in order to uphold the State's overriding public policy despite changing times.

With respect to the payment of wages, the Legislature has established a simple framework for employers to follow. Employers must pay employees twice a month on designated paydays. (Lab. Code, § 204, subd. (a).) At the time of payment, employers must furnish employees with an itemized wage statement setting forth specific information. (Lab. Code, § 226, subd. (a).) If an employee is terminated or resigns, an employer must pay the employee all remaining wages owed and due. (Lab. Code, §§ 201-203.) Each statutory provision represents a distinct legal obligation under the Labor Code, and together they establish a coherent statutory scheme that reflects the remedial protection framework.

This case concerns the treatment of premium wages owed pursuant to Labor Code section 226.7 and whether employers must treat these premium wages in the same manner as all other "wages" with respect to sections 203 and 226.[1] The case also queries the applicable prejudgment interest rate to premium wages when an employer fails to pay them altogether.

The opinion of the Court of Appeal holds that neither section 203 nor section 226 applies to premium wages under section 226.7. Stated in terms of the employer's obligations set forth above, the Court of Appeal opinion holds that employers need not inform employees of any payment of section 226.7 premium wages (in accordance with section 226, subd. (a)), or pay those premium wages to employees when they resign or are terminated (in accordance with sections 201-203).

In reaching this conclusion, the Court of Appeal determined that premium pay under section 226.7 is wages in name alone and not accorded the status of *actual* wages under California law. From this, the Court of Appeal held that section 226.7 premium pay is neither considered "wages" as the term is used in section 203, nor considered "wages earned" as that term is stated in section 226. Based on the same rationale, the Court of Appeal reversed the award of ten percent prejudgment interest historically applied to wages and remanded to the trial court for recalculation at seven percent.

The entirety of the Court of Appeal's analysis emanates from the flawed conviction that section 226.7 premium pay is not wages, despite this Court's analysis and holding in *Murphy v. Kenneth Cole Productions, Inc.*

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

(2007) 40 Cal.4th 1094, which the Court of Appeal relegated to a decision concerning solely the statute of limitations applicable to claims under section 226.7. Once this faulty premise is discarded, the principles of statutory construction illustrate the Legislature's intent to have premium wages under section 226.7 treated in the same fashion as all wages when considering the employer's obligations to employees with respect to the payment of wages, or in response to an employer's outright failure to adhere to those independent statutory obligations.

This Court should validate the protections afforded by sections 203, 226, and 226.7 and promote the objectives of the statutory scheme of which they are part. As such, the opinion of the Court of Appeal must be reversed with respect to the Sections II and III. The statutory language of sections 203 and 226, their respective legislative histories, and the intended purpose of compensating employees for detrimental working conditions, all favor a construction that requires employers to treat wages under section 226.7 as all other wages for purposes of section 203 and 226. During the pendency of employment, employers should pay premium wages in the pay period during which the section 226.7 violation occurred, record the payment in the employee's wage statement, and most certainly pay any unpaid premium wages owed and due upon separation of employment or otherwise be subject to the independent remedies of each statutory provision. Further, when employers fail to pay wages under section 226.7 altogether, interest should accrue on those wages at ten percent per annum. The opinion of the Court of Appeal should be affirmed in all other respects.

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FACTS AND BACKGROUND

Defendant, Appellant, and Cross-Respondent Spectrum Security Services, Inc. (hereinafter "Spectrum") is a federal contractor that provides short-term custodial services to federal agencies. (2 JA 0185-0186, 0244.) Spectrum employs hundreds of security officers ("officers") to maintain custody of federal prisoners or detainees who require medical attention or treatment. (4 JA 0753, 0775.) The officers' sole responsibility is to maintain custody of the prisoner while he or she is outside the control of the contracting federal agency. (2 JA 0207-0208, 0244.) Since June 2004, Spectrum has provided these services throughout Southern California at hospitals, hotels, clinics, or other treatment centers. (2 JA 0211, 0243, 0306; 13 JA 2967-2969.)

Representative Plaintiff, Respondent, and Cross-Appellant Gustavo Naranjo (hereinafter "Naranjo") began working for Spectrum as an officer in December 2006. During Naranjo's employment, Spectrum's policies expressly prohibited officers from taking meal periods and rest breaks. As stated by Spectrum: "This job does not allow for breaks other than using the hallway bathrooms for [a] few minutes." (2 JA 0221-0223, 0254-0256.) Officers were required to remain in the prisoners' presence and maintain constant observation. (2 JA 0202-0203.) 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.) Nor did Spectrum pay officers one additional hour of pay at their regular rate of compensation for each workday that their meal and rest periods were not provided.

I. PROCEDURAL HISTORY

Spectrum terminated Naranjo in May 2007 because he had left his post to eat. (3 JA 0419-0420.) On June 4, 2007, Naranjo filed a class action

on behalf of himself and other officers similarly situated, alleging causes of action for: (1) meal period violations; (2) rest period violations; (3) violation of Labor Code section 203; (4) violation of Labor Code section 226; (5) unfair business practices; (6) conversion; and (7) injunctive relief. (1 JA 1-11.) The trial court granted summary judgment in favor of Spectrum, concluding that the causes of action were preempted by the McNamara-O'Hare Service Contract Act (41 U.S.C § 351 et seq.), but the Court of Appeal reversed with respect to Naranjo's claims under Labor Code sections 203, 226, and 226.7, and remanded the case to the trial court for further proceedings. (*Naranjo v. Spectrum Sec. Services, Inc.* (2009) 172 Cal.App.4th 654 (*Naranjo I*).)

On February 3, 2011, the trial court certified a class of current and former officers employed by Spectrum in California during the period of June 4, 2004 to the then-present for adjudication of Naranjo's claims for meal period violations under Labor Code section 226.7, waiting time penalties under Labor Code section 203, and inaccurate itemized wage statements in violation of Labor Code section 226. (4 JA 0800-0804; 9 JA 1979.) The case proceeded to trial in three phases from January to August 2013.

In the first phase, the trial court heard evidence regarding various federal defenses asserted by Spectrum. After five days of trial, 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.)

The trial court empaneled a jury for the second phase to determine the merits of the class meal period claim. The jury trial commenced on May 28, 2013 and concluded on June 6, 2013. 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 in the amount of $1,393,314, plus pre-judgement interest at a rate of ten percent per annum in the amount of $955,377. (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 during the period of June 4, 2004 to September 30, 2007. At the conclusion of the third phase, the trial court held 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, the court found in favor of the class, noting that Spectrum's failure to include section 226.7's additional hour of pay in its employees' wage statements was knowing and intentional and not inadvertent. (9 JA 1989.) As to section 203 waiting time penalties, the court found in favor of Spectrum, determining that its defenses were presented in good faith, precluding a finding of willfulness. (9 JA 1990.) Based on these findings, the court awarded $399,950 in penalties and $731,586.60 in attorneys' fees pursuant to section 226, subdivision (e). (9 JA 1190; 11 JA 2548.) Judgment was entered on January 31, 2014. (11 JA 2550-2554.)

II. APPELLATE PROCEEDINGS

Both Spectrum and Naranjo appealed from the judgment. Spectrum challenged its liability for meal period violations under section 226.7, the award of prejudgment interest, and the award of itemized wage statement penalties and attorneys' fees under section 226, subdivision (e). Naranjo and the class cross-appealed, challenging the trial court's denial of section 203 waiting time penalties, the apportionment of the attorneys' fees

awarded, and the intermediate order denying certification of the rest period claim. (*Naranjo et al. v. Spectrum Sec. Services, Inc.* (2019) 40 Cal.App.5th 444, 456, review granted Jan. 2, 2020, S258966 (*Naranjo II*).)[2]

The Court of Appeal affirmed the portion of the judgment finding Spectrum liable for meal period violations and awarding damages under section 226.7. (*Id.* at p. 463.) The court reversed the award of prejudgment interest at ten percent and remanded with instructions to recalculate and award interest at seven percent. (*Id.* at p. 476.) The order denying class certification as to the rest break claim was reversed with instructions to certify. (*Id.* at p. 481.)

With respect to the applicability of Labor Code sections 203 and 226, the Court of Appeal held "that section 226.7 actions do not entitle employees to pursue the derivative penalties in sections 203 and 226." (*Id.* at p. 474.) The opinion was modified on October 10, 2019, with respect only to language addressing rest period certification. The opinion was certified for publication and became final, as modified, on October 26, 2019. The Court granted Naranjo's Petition for Review on January 2, 2020.

ARGUMENT

Because this case involves questions of statutory construction, this Court's review is de novo. (*Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 387.) The Court of Appeal's holding that violations of section 226.7 neither give rise to claims under sections 203 and 226, nor authorize an award of prejudgment interest at ten percent, is premised on

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[2] Citation to the Court of Appeal decision is made solely for consideration by this Court in accordance with Rule 8.1115, subdivision (e)(1) of the California Rules of Court.

the notion that premium payments made pursuant to section 226.7 are not, in fact, wages. The Court of Appeal limited its consideration of the term "wages" to the statutory text of section 200. (*Naranjo II*, *supra*, 40 Cal.App.5th at p. 473.) Finding that the additional hour of pay prescribed by section 226.7 does not fall within the statutory definition of wages in section 200, the Court of Appeal held that "an employer's failure, however willful, to pay section 226.7 statutory remedies does not trigger section 203's derivative penalty provisions for untimely wage payments." (*Id.* at p. 474.) As for section 226, "[t]he result is the same." (*Ibid.*) "Section 226.7's premium wage is a statutory remedy for an employer's conduct, not an amount 'earned' for 'labor, work, or service . . . performed personally by the [employee].'" (*Ibid*, citing Lab. Code § 200, subd. (b).) In the same vein, the Court of Appeal reversed the award of prejudgment interest, stating that "[t]his is not a wage case, and [*Bell v. Farmers Ins. Exchange* (2006) 135 Cal.App.4th 1138] has no application here." (*Id.* at p. 475.)

Contrary to the Court of Appeal's framing of the matter as statutory penalties and attorneys' fees from derivative claims following violation of section 226.7 (*id.* at p. 474), this case presents far more fundamental questions concerning employers' obligations under the Labor Code to provide employees with accurate itemized wage statements during the course of their employment (§ 226, subd. (a)), and to pay all wages owed and due upon separation of employment (§ 203, subd. (a)). The issues presented concern the treatment of premium wages owed pursuant to section 226.7, whether employers must treat these premium wages in the same manner as all other "wages" with respect to sections 203 and 226, and what prejudgment interest rate applies to unpaid premium wages owed pursuant to section 226.7. Consideration of these questions first requires

re-establishing the foundational principle that section 226.7 premium payments are wages.

I. PREMIUM PAYMENTS OWED TO EMPLOYEES UNDER LABOR CODE SECTION 226.7 ARE WAGES

The Court of Appeal pronounced that it was following this Court's decisions in *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094 (*Murphy*) and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244 (*Kirby*) in construing the statutory language of sections 203 and 226. (*Naranjo II*, *supra*, 40 Cal.App.5th at p. 472.) It was not.

Notably absent from the Court of Appeal's opinion is any acknowledgment that section 226.7 payments have been, in fact, deemed wages by this Court. The court's every reference to *Murphy* indicates that it considered *Murphy*'s holding solely applicable to the limitations question presented there. (*Naranjo II*, *supra*, 40 Cal.App.5th at pp. 456, 465, 467, 473.) Even in referring to the decision of the trial court, which acknowledged that section 226.7 payments are wages, the Court of Appeal identified the trial court's reliance on *Murphy* "for statute of limitations purposes." (Compare *id.* at p. 456 with 9 JA 1987.) The appellate court went so far as to emphasize this point, adding italics to this phrase. (*Naranjo II*, *supra*, 40 Cal.App.5th at p. 467 ["*Murphy's* conclusion that section 226.7's remedy is a 'wage' *for purposes of determining what statute of limitations applies*"] [internal quotations omitted].)

In reducing *Murphy* to a decision concerning merely the statute of limitations applicable to claims under section 226.7, the Court of Appeal starts its discussion with a quip on the famed passage from *Romeo and Juliet* wherein Juliet muses: "What's in a name?" (Romeo and Juliet, act II, scene

2, line 46.)[3] Entitling this section of the decision, "A Wage by any Other Name," the Court of Appeal suggests that premium pay under Labor Code section 226.7 are wages in name alone and not accorded the status of actual wages under California law.[4] (*Id.* at pp. 463-464.) To advance this construction—that premium pay under section 226.7 is not wages for any purpose other than the statute of limitations—the Court of Appeal limited its consideration of the term "wages" to the statutory text of section 200, ignoring many clearly applicable decisions of this Court to the detriment of employees whom those decisions are meant to protect.[5] Accordingly, a review of this Court's precedential holdings is warranted.

A. *Murphy*'s Precedential Authority Extends Beyond the Statute of Limitations for Claims Under Section 226.7

This Court's holding in *Murphy* is unequivocal: premium payments owed to employees under section 226.7 are wages. (*Murphy*, *supra*, 40 Cal.4th at pp. 1102 [Heading A], 1114.) Although *Murphy* arose in the context of the appropriate statute of limitations for actions under section 226.7 (*Murphy*, *supra*, 40 Cal.4th at p. 1099), *Murphy*'s significance clearly

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[3] The complete passage states: "What's in a name? That which we call a rose by any other name would smell as sweet." (Shakespeare, Romeo and Juliet, act II, scene 2, lines 46-47.)

[4] For analysis of this passage in contemporary usage, *see* Ammer, The Dictionary of Clichés (2013) p. 376; see also Farlex, *Dictionary of Idioms* (2015) https://idioms.thefreedictionary.com/a+rose+by+any+other+name [as of Nov. 1, 2019].

[5] The Court of Appeal proffers the justification that "the Legislature did not amend section 200 to accommodate the holding [of *Murphy*], i.e., the statutory definition of 'wages' was not expanded to include the payment of a remedy rather than simply the payment for labor." (*Id.* at p. 473.) This presupposes that the Legislature would ever need to amend section 200. (See PR 20-21.)

extends beyond that context. In reaching its holding, this Court engaged in a thorough analysis of the statutory language and its administrative and legislative history, identifying several distinguishing characteristics of the "additional hour of pay" prescribed by section 226.7 and relevant to the Court's analysis, namely:

- The Legislature frequently uses the words "pay" and "compensation" as synonyms for "wages," and use of the term "pay" in section 226.7 conforms to the definition of "wages" in section 200. (*Id.* at p. 1104, fn. 6.)
- In addition to all amounts received for labor performed by employees, wages include "those benefits to which an employee is entitled as a part of his or her compensation . . ." (*Id.* at p. 1103.)
- Many long-familiar types of compensation and elevated rates of pay required by the Legislature "compensate employees for certain kinds of labor or scheduling resulting in a detriment to the employee," and impose additional mandatory wage obligations notwithstanding an employer's payment of regular wage rates for all of the hours an employee actually spends working. (*Id.* at p. 1112.)
- Payments under section 226.7 are akin to overtime, double time, reporting time, and split-shift pay in that "[e]ach of these forms of compensation [] uses the employee's rate of compensation as the measure of pay and compensates the employee for events other than time spent working." (*Id.* at p. 1113.)
- Employees have an immediate entitlement to premium wages for violation of section 226.7. An employee is entitled to the additional hour of pay immediately upon being forced to miss a meal or rest period. (*Id.* at p. 1108.)

Since *Murphy*, this Court has repeatedly reaffirmed that "'[w]ages include various types of employment benefits to which employees are entitled as a part of their compensation." (*McLean v. State of California* (2016) 1 Cal.5th 615, 623, fn. 4.) During the same time, California appellate courts have relied on *Murphy* numerous times in the ensuing thirteen years in developing the State's wage and hour jurisprudence. (See, e.g., *Safeway,*

Inc. v. Superior Court (2015) 238 Cal.App.4th 1138, 1155 [acknowledging employees' immediate entitlement to premium wages]; *United Parcel Service, Inc. v. Superior Court* (2011) 196 Cal.App.4th 57, 65-68 [allowing recovery of two hours pay on a single work day for independent meal and rest period violations]; *Lazarin v. Superior Court* (2010) 188 Cal.App.4th 1560, 1582-1584 [discussing retroactivity of section 226.7].) This Court's holding in *Kirby* does not depart from the fundamental premise that premium pay owed under section 226.7 are wages.

B. In Distinguishing the Legal Violation from the Resulting Remedy, *Kirby* Reaffirmed that Premium Payments Owed to Employees Under Section 226.7 Are Wages

Five years after *Murphy*, this Court decided *Kirby*, which presented the question of whether a prevailing party in a case premised on meal- and rest-period violations could recover attorneys' fees under Labor Code section 218.5. (53 Cal.4th at p. 1255.) This Court held that "a section 226.7 action is brought for the nonprovision of meal and rest periods," not for the 'nonpayment of wages,'" and therefore the prevailing party in a section 226.7 action may not recover its attorneys' fees. (*Ibid.*)

Despite some federal district courts' view, the holdings in *Murphy* and *Kirby* are not incongruous. (See *Naranjo II*, *supra*, 40 Cal.App.5th at pp. 469-471 [reviewing cases]; *Stewart v. San Luis Ambulance, Inc.* (2017) 878 F.3d 883, 888 [same].) This Court expressly conveyed as much, stating that the decision in *Kirby* "is not at odds with our decision in *Murphy*." (*Id.* at p. 1257.) While reiterating that section 226.7 liability for an additional hour of pay "is properly characterized as a wage," this Court carefully distinguished the question resolved in *Murphy*—which turned on the nature of the payment required by section 226.7—from the question presented in

Kirby—which turned on the nature of a cause of action brought under section 226.7. (*Kirby*, *supra*, 53 Cal.4th at 1257.) Whereas *Kirby* holds that the legal violation at the heart of a section 226.7 claim is the nonprovision of meal and rest periods, *Murphy* maintains that the remedy for such a violation is the payment of a premium wage.

In reaching this conclusion, this Court parsed the statutory language of section 218.5, identifying a textual distinction between references to the legal violation and the resulting remedy. As this Court stated:

> As a textual matter, we note that section 218.5 uses the phrase "action brought for" to mean something different from what the phrase means when it is coupled with a particular remedy (e.g., "action brought for damages" or "action brought for injunctive relief"). An "action brought for damages" is an action brought to obtain damages. But an "action brought for nonpayment of wages" is not (absurdly) an action to obtain nonpayment of wages. Instead, it is an action brought on account of nonpayment of wages. The words "nonpayment of wages" in section 218.5 refer to an alleged legal violation, not a desired remedy.

(*Id.* at p. 1257.) Further harmonizing this supposed distinction with the holding in *Murphy*, which properly characterized section 226.7 payments as wages, the Court elucidated: "To say that a section 226.7 remedy is a wage, however, is not to say that the *legal violation* triggering the remedy is nonpayment of wages." (*Ibid*, original italics.) "Action brought for" is the operative phrase, and the object following the preposition "for" refers to the alleged legal violation, not the desired remedy. (*Ibid.*)

The language of section 218.5 and this Court's analysis of that statutory text in *Kirby* provide a useful contrast to the statutory

construction of sections 203 and 226, which both evidence the intent of the Legislature to include premium wages under section 226.7.

II. THIS COURT SHOULD HOLD THAT PREMIUM WAGES OWED UNDER SECTION 226.7 MUST BE TREATED AS WAGES WITH RESPECT TO SECTIONS 201-203

The wage payment provisions of the Labor Code impose timing requirements on the payment of wages to employees upon separation of employment. If an employee is discharged, "the wages earned and unpaid at the time of discharge are due and payable immediately." (§ 201, subd. (a).) If an employee quits, absent a written employment contract for a specified period of time, "his or her wages shall become due and payable not later than 72 hours thereafter," unless sufficient notice has been given, "in which case the employee is entitled to his or her wages at the time of quitting." (§ 202, subd. (a).) If an employer willfully fails to pay "any wages of an employee who is discharged or who quits" the employer is subject to penalties commonly referred to as waiting time penalties. (§ 203, subd. (a).) "Together, sections 201 and 202 direct employers to promptly pay wages upon separation of employment by discharge or by resignation, with section 203 providing for penalties when the employer willfully fails to do so." (*Smith v. Superior Court* (2006) 39 Cal.4th 77, 85 (*Smith*).)

The focus of the instant case is the application of section 203 to an employer's failure to pay premium wages owed under section 226.7 to an employee who was discharged.[6] (*Naranjo II*, *supra*, 40 Cal.App.5th at p. 454.) Based on its erroneous belief that section 226.7's remedy does not

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[6] It is undisputed that Spectrum discharged Naranjo because he left his post to take a meal period (3 JA 0419-0420), thereby satisfying the condition precedent in section 201 to entitle him—and any other separated class member—to waiting time penalties under section 203.

constitute wages, the Court of Appeal held that "an employer's failure, *however willful*, to pay section 226.7 statutory remedies does not trigger section 203's derivative penalty provisions for untimely wage payments." (*Id.* at p. 474, italics added.) The statutory text of section 203 establishes the opposite conclusion, which is supported by the legislative history and the overriding public policy favoring the prompt payment of wages.

A. The Statutory Language Clearly and Unambiguously Requires Employers to Pay "Any and All" Wages to Employees upon Separation of Employment or Be Subject to Waiting-Time Penalties

In construing a statute, this Court's fundamental task is to ascertain the Legislature's intent so as to effectuate the purpose of the statute. (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.) Statutes governing conditions of employment are to be construed broadly in favor of protecting employees. (*Murphy*, *supra*, 40 Cal.4th at p. 1103.) In determining whether the Legislature intended section 226.7 premium wages to be paid to employees upon separation of employment in accordance with sections 201-203, the Court "must look first to the words of the statute, 'because they generally provide the most reliable indicator of legislative intent.'" (*Ibid.*) In reading the statutes, the words chosen by the Legislature "are to be given their plain and commonsense meaning." (*Ibid.*)

The term "wages" is used several times throughout sections 201-203.[7] With respect to section 203, the Legislature makes clear that an employer who willfully fails to pay "*any wages* of an employee who is discharged or who quits" shall be subject to the penalty provided therein.

[7] The term "wages earned" provided in section 201 is discussed in Section III.A., *infra*, in conjunction with use of that term as provided in section 226.

(§ 203, subd. (a), italics added.) Notably, the Legislature identifies "any wages" as the scope of the employer's obligation. "'Any' is a term of broad inclusion, meaning 'without limit and no matter what kind.'" (*Lopez v. Sony Electronics, Inc.* (2018) 5 Cal.5th 627, 635, citing *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798.) Absent an express exception, this would include premium wages owed pursuant to section 226.7.

Subdivision (b) addresses the applicable statute of limitations for section 203 claims, which may be brought "at any time before expiration of the statute of limitations on an action for the wages from which the penalties arise." (§ 203, subd. (b).) In *Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, this Court concluded that the limitations period set forth by subdivision (b) promotes the long-standing public policy favoring full and prompt payment of employees' wages. (*Id.* at p. 1400.) Yet, Spectrum will surely point to the statutory text of subdivision (b), and implore this Court to apply the rationale of *Ling v. P.F. Chang's China Bistro, Inc.* (2016) 245 Cal.App.4th 1242 (*Ling*), which opined that section 226.7 payments do not constitutes wages as the term is used in section 203. (*Id.* at p. 1261.) Closer examination of *Ling* shows the opposite to be true.

In commentary fairly characterized as dicta,[8] the court in *Ling* compared the statutory text of section 218.5, subdivision (a), to the text of section 203, subdivision (b) to support its conclusion. Relying on *Kirby*, the court surmised that "section 226.7 cannot support a section 203 penalty

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[8] The relevant discussion in *Ling* starts with the caveat: "Even if the arbitrators ruling here . . . is reviewable . . . ." (*Ling, supra*, 245 Cal.App.4th at p. 1261; *see also In re Autozone, Inc.* (N.D. Cal. Aug. 10, 2016, No. 3:10-MD-02159) 2016 WL 4208200 at *6-*7 [identifying the commentary in *Ling* as dicta].)

because section 203, subdivision (b) tethers the waiting time penalty to a separate action for wages." (*Ling, supra*, 245 Cal.App.4th at p. 1261.) "[T]he fact that the remedy is measured by an employee's hourly wage does not transmute the remedy into a wage as that term is used in section 203, which authorizes penalties to an employee who has separated from employment without being paid." (*Ibid.*) This conclusion, which fails to consider either the maxims of statutory construction or the syntactic analysis in *Kirby*, is categorically incorrect. *Ling* nonetheless offers a useful measure from which this Court can properly parse the statutory text of section 203, subdivision (b).

As mentioned above, *Kirby* recognized that the Legislature intended a different meaning in section 218.5 by coupling the phrases "action brought for" and "nonpayment of wages" than what that phrase—"action brought for"—means when followed by a particular remedy. (*Kirby, supra*, 53 Cal.4th at 1256.) As used in section 218.5, the preposition "for" in the phrase "action brought for" means *on account of* the nonpayment of wages. In other instances when coupled with a particular remedy, use of the proposition "for" means *to obtain* the particular remedy. (*Ibid.*)

Juxtaposing the operative phrase in section 218.5, subdivision (a) with the operative phrase in section 203, subdivision (b), illustrates that use of the preposition "for" with reference to "wages" in section 203, subdivision (b), describes the desired remedy, not the alleged legal violation. As displayed side-by side:

§ 218.5, subd. (a)	**§ 203, subd. (b)**
In any action brought for the nonpayment of wages, . . .	. . . on an action for the wages . . .

If conferring significance to every word and phrase (*Carmack v. Reynolds* (2017) Cal.5th 844, 849-850), one must note that section 218.5, subdivision (a) utilizes words not found in section 203, subdivision (b), specifically "brought" and "nonpayment of," which this Court in *Kirby* identified as essential to section 218.5's reference to the alleged legal violation. (*Kirby*, *supra*, 53 Cal.4th at 1256-1257.) Conversely, an "action for the wages" in section 203 does not refer to *wages* as a legal violation. It refers to the remedy sought. Here, the remedy sought is the premium wages owed and unpaid under section 226.7.[9]

The use of definite and indefinite articles by the Legislature further supports a construction that encompasses section 226.7's premium wages as wages required to be paid on termination under section 203. This Court noted in *Pineda*, "[t]he use of both indefinite and definite articles in section 203 underscores that the Legislature's choice to use one as opposed to the other was deliberate and should be accorded significance." (*Pineda*, supra, 50 Cal.4th at p. 1397, fn. 5.) Referring to a specific person, place, or thing (*id.* at p. 1396), the definite article "the" as used in the prepositional phrase *for the wages* refers to specific wages—namely those identified in section 203, subdivision (a)—which broadly encompasses "any wages" that an employer has failed to pay in accordance with sections 201 or 202. The object of the preposition—*wages*—refers to the remedy sought, not an alleged legal violation. The legislative history of section 203 further supports this construction.

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[9] It is undisputed that Spectrum never paid officers premium wages for working without being provided lawful meal periods or rest periods. Nor did Spectrum ever report information regarding the earned but unpaid premium pay on officers' wage statements. (RXAOB 51.)

B. The Legislative History of Section 203 Supports the Prompt Payment of Any and All Wages, Including Wages Under Section 226.7

To the extent the statutory language leaves any uncertainty about the Legislature's intent, the legislative history of section 203 supports a construction that requires employers to pay premium wages to employees upon separation of employment. The history of the wage payment provisions governing payment of wages to employees upon separation of employment dates back to 1911, with the first statute that would later become sections 201 and 202. (Stats.1911, ch. 663, § 1, p. 1268; *Smith*, *supra*, 39 Cal.4th at pp. 87, fn. 4, 88, fn. 6.) After the 1911 act was deemed unconstitutional, the Legislature amended the act in 1915, which included a civil penalty provision that would later become section 203. (Stats.1915, ch. 143, § 1, p. 299; *Smith*, *supra*, 39 Cal.4th at pp. 87, fn. 4; *Pineda*, *supra*, 50 Cal.4th at p. 1398.) During this time, the Bureau of Labor Statistics (BLS) recommended and enforced wage-related legislation, producing biennial reports to the Legislature relating to all departments of labor within in the State. (*Pineda*, *supra*, 50 Cal.4th at p. 1399; *Smith*, *supra*, 39 Cal.4th at p. 87.) This Court has previously consulted these reports "for whatever light they may shed regarding the purpose of wage payment legislation." (*Ibid.*)

Early BLS biennial reports emphasized the continued need for legislation to protect workers from exploitative employers. (*Smith*, *supra*, 39 Cal.4th at p. 89.) The 20th BLS Biennial Report, which commented on the decision in *Moore v. Indian Spring Channel Gold Min. Co.* (1918) 37

Cal.App. 370 (*Moore*),[10] discussed the intended purpose of the penalty provision, as summarized by this Court in *Pineda*:

> The [] biennial reports demonstrate the penalty provision was intended to induce, if not to compel, the employer to keep faith with his employee and to rectify a wrong which not only injures the employee but is an injury to the public in its tendency to deprive the public of an incidental benefit which comes from the employee's labor.

(*Pineda*, *supra*, 50 Cal.4th at p. 1399 [internal quotations and citing references removed]; see also *Smith*, *supra*, 39 Cal.4th at pp. 88-89, citing BLS, 20th Biennial Rep.: 1921-1922 (1923) p. 36 [quoting *Moore*, *supra*, 37 Cal.App. at p. 380].) The importance of the penalty provision as a tool to encourage prompt wage payment remains today. (*Pineda*, *supra*, 50 Cal.4th at p. 1399.) Section 203 was enacted in 1937 as part of the Labor Code and was subsequently amended in 1939, establishing the statute of limitations on claims seeking unpaid wages. (*Ibid.*) With only a few minor amendments since,[11] the legislative purpose of section 203 has not changed.

In 2000, due to widespread employer noncompliance with the required provision of meal and rest periods, both the Industrial Welfare Commission (IWC) and the Legislature enacted a pay remedy to compensate employees who had been denied meal and/or rest periods.

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[10] *Moore* involved a constitutional challenge to the 1911 act, as amended in 1915. (*Moore*, *supra*, 37 Cal.App. at p. 372.)

[11] Since 1939, section 203 has been amended six times, but without substantive change to the language at issue here. Most amendments involve immaterial word choice modification and/or the addition or deletion of final payment provisions covered by section 203 (e.g., §§ 201.3, 201.5, 201.6, 201.8) concurrent with the enactment of the particular section. (See Stats.1975, ch. 43, § 1, p. 75; Stats.1997, ch. 92, § 1; Stats.2008, ch. 169, § 2; Stats.2014, ch. 210, § 1; Stats.2019, ch. 253, § 3; Stats.2019, ch. 700, § 2.5.)

(See *Murphy, supra*, 40 Cal.4th at pp. 1105-1108.) At that time, the Legislature was aware of section 203 and was aware that the penalty provision was tethered to the three-year limitations period as actions to recover wages. (*Id.* at p. 1109.) In enacting section 226.7, "the Legislature intended [] first and foremost to compensate employees for their injuries" (*id.* at pp. 1110-1111), which coincides with the original intent of section 203—to rectify a wrong that injures employees and deprives the public of an incidental benefit stemming from their employment. From this, it should be inferred that, had the Legislature intended for section 226.7 to be excluded from the "wages" discussed in section 203, it could have unambiguously drafted the language of section 226.7 to preclude its application to section 203. (See *id.* at p. 1109 [discussing corollary with respect to section 226.7].) The Legislature did not, and the Department of Labor Standards Enforcement (DLSE) has considered section 226.7's premium wages due and payable upon separation of employment since the issuance of *Murphy*.

C. The DLSE Has Consistently Enforced Section 226.7 Premium Pay as "Wages" Under Section 203

While it is well-settled that although internally-generated statutory interpretations by the DLSE are not afforded deference (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 572), this Court may consider DLSE interpretations insofar as they constitute "a body of experience and informed judgment to which courts and litigants may properly resort for guidance." (*Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal. 4th 1, 10-11, quoting *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1029, fn. 11; see also *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) Cal.4th 554, 563-566 [considering a DLSE interpretive bulletin,

several opinion letters, and a bulletin update].) Since April 16, 2007, because of *Murphy*, the DLSE has interpreted wages owed an employee under section 226.7 as "wages" for the purpose of enforcing waiting time penalties under section 203. (MFJN 0146-0147 ["The *Murphy* decision, by implication, allows employees who are owed LC 226.7 pay at time of termination, to recover waiting time penalties pursuant to LC 203 if all final wages are not paid in accordance with LC 201/202."].) These actions are consistent with the statutory text, legislative history, and overriding public policy of the State.

D. Meal Periods, Rest Periods, and the Prompt Payment of Wages Are Each Part of the State's Remedial Worker Protection Framework

To construe section 203 to exclude premium wages owed under section 226.7 would produce absurd consequences, which this Court must presume the Legislature did not intend. (*People v. Mendoza* (2000) 23 Cal.4th 896, 908.) The jurisprudence of this Court repeatedly advises that the remedial nature of legislative enactments regulating wages, hours, and working conditions are intended to protect and benefit employees. (*Industrial Welfare Com. v. Superior Court* (1980) 27 Cal.3d 690, 724.) "Meal and rest periods have long been viewed as part of the remedial worker protection framework." (*Murphy*, *supra*, 40 Cal.4th at p. 1105, citing *Industrial Welfare Com. v. Superior Court*, *supra*, 27 Cal.3d at p. 724; *Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal.App.4th 968, 975.) So too is the prompt payment of employee wages, which the Legislature repeatedly has designated fundamental to the State's public policy by enacting various provisions of the Labor Code, including section 203. (See *McLean*, *supra*, 1 Cal.5th at p. 626; *Pineda*, *supra*, 50 Cal.4th at p. 1400; *Smith*, *supra*, 39

Cal.4th at p. 82; *Smith v. Rae-Venter Law Group* (2002) 29 Cal.4th 345, 360.) Consistent application of this public policy dictates that section 226.7's premium wages be considered wages for purposes of section 203.

"The entitlement to prompt payment of final wages, like the entitlement to the wages themselves, extends to employees whose employment is terminated, whether by discharge or by quitting." (*McLean v. State of California* (2016) 1 Cal.5th 615, 623.) As employees are entitled to premium wages immediately if circumstances permit (*Murphy*, *supra*, 40 Cal.4th at p. 1108), employers are obligated to pay those wages in real time, during the pendency of employment, and most certainly upon separation from it. (*Davis v. Farmers Ins. Exchange* (2016) 245 Cal.App.4th 1302, 1331.) If they willfully fail to do so, employers should be subject to section 203, as would be the case with any wages. Given its statutory construction and relevant legislative history, construing section 203 as excluding an entire category of wages would contravene the public policy of the State.

III. THIS COURT SHOULD HOLD THAT WAGES EARNED UNDER SECTION 226.7 MUST BE TREATED AS WAGES EARNED FOR PURPOSES OF SECTION 226

The Court of Appeal further attempts to draw some meaningful distinction between section 226.7's remedy and "wages" in its analysis of section 226, stating: "[s]ection 226.7's premium wage is a statutory remedy for an employer's conduct, not an amount 'earned' for 'labor, work, or service . . . performed personally by the [employee].'" (*Naranjo*, *supra*, 40 Cal.App.5th at p. 474, citing Lab. Code § 200, subd. (b).) This flawed comparison captures the essence of the Court of Appeal's faulty analysis because wages *are* statutory remedies, and the term "wages earned" has

long incorporated items beyond regular wage rates paid to employees for the hours an employee actually spends working.

A. The Ordinary Meaning of "Wages Earned" Warrants the Inclusion of Wages Under Section 226.7

Statutory language must be construed both in the context of the statute as a whole and with respect to the overall statutory scheme, giving "significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose." (*People v. Canty* (2004) 32 Cal.4th 1266, 1276.) As such, statutes must be construed "with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness." (*In re Marriage of Harris* (2004) 34 Cal.4th 210, 222.) Section 226—like sections 203 and 226.7—is 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. Therefore, proper construction of section 226 warrants consideration of this scheme and its adjacent provisions.

At issue with respect to the construction of section 226 is the phrase "wages earned" and whether that phrase includes premium wages earned under section 226.7. "Wages earned" appears twice in section 226, subdivision (a), which requires that wage statements reflect, among other things, the employee's "gross wages earned," "net wages earned," and "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." (§ 226, subd. (a).)

Whereas this Court has previously construed the words "pay" and "compensation" as synonyms for "wages" (*Murphy, supra*, 40 Cal.4th at p. 1104, fn.6.), the term "earned" is not defined in the Labor Code.

Therefore, proper statutory construction should begin by considering the ordinary meaning of "earned." Adopting this Court's analysis in *Smith v. Superior Court* (2006) 39 Cal.4th 77 as a roadmap, the most accurate construction of section 226 establishes that premium wages under section 226.7—like all other wages—should be construed as "wages earned" in section 226, and must be accounted for and recorded on itemized wages statements prescribed under section 226.

Although not binding, courts appropriately refer to the dictionary definitions of words when attempting to ascertain the meaning of statutory language. (*Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1121–1122.) While various dictionaries describe "earned" with reference to the performance of work,[12] these sources to do not categorically limit the transitive verb to such circumstances as did the Court of Appeal.[13] Nor do dictionaries purport to define the term as excluding situations where a benefit is acquired as a result of some action other than labor. (*Smith*, *supra*, 39 Cal.4th at p. 84.) Indeed, other commonly understood meanings of "earned" include: **"[t]o acquire or deserve as a result of effort or action"** (American Heritage Dictionary (2020) <https://ahdictionary.com /word/search.html?q=earn> [as of Feb. 29, 2020].)); and **"to come to be duly worthy of or entitled or suited to"** (Merriam-Webster, *Regular* (2020) <https://www.merriam-webster.com/dictionary/earn> [as of Feb. 29, 2020].)

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[12] (Merriam-Webster, Regular (2020) <https://www.merriam-webster.com/dictionary/earn> [as of Feb. 29, 2020]; American Heritage Dictionary (2020) <https://ahdictionary.com/word/search.html?q=earn> [as of Feb. 29, 2020].)

[13] Notably, the term "earned" appears nowhere in section 200, and the Court of Appeal offered no independent construction of the term. (PFR 22.)

The nature of the employment relationship and, specifically, the payment of wages, supports an inclusive construction of the term "earned." In *Murphy*, this Court reviewed many other forms of compensation deemed wages earned "for events other than time spent working," noting that the Legislature has long assigned compensation to employees as a result of detrimental scheduling. (*Murphy*, *supra*, 40 Cal.4th at pp. 1112-1113.) For example, employees earn premium wages of fifty percent of their regular rate of pay for working in excess of eight hours in a day and one hundred percent their regular rate of pay for working in excess of 12 hours in a day, despite performing the same work as during the first eight hours. (*Id.* at p. 1109; *Cal. Manufacturers Assn. v. Industrial Welfare Com.* (1980) 109 Cal.App.3d 95, 111 [premium wages "primary device for enforcing limitation on the maximum hours of work"].) An employee earns an additional hour of wages if scheduled to work a split shift, despite being "compensated for the hours he or she actually works." (*Murphy*, *supra*, 40 Cal.4th at p. 1113.) Employees earn up to four hours of wages at their regular rate of pay for reporting to work and *not* performing labor. (*Ibid.*) Even vacation is earned as wages whose receipt is delayed as a form of deferred compensation. (*Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, 779-780.)

With respect to meal or rest period compensation, such wages are earned under section 226.7 when employees are forced to forgo a meal or rest period. As made clear by this Court, the employee earns the section 226.7 additional hour of pay "immediately upon being forced to miss a rest or meal period." (*Id.* at p. 1108; see also *Safeway, Inc. v. Superior Court* (2015) 238 Cal.App.4th 1138, 1155, fn. 5 ["For that reason, employers owe the premium wages in the absence of any request by employees or payment

authorization by their supervisors."].) Of course, the various forms of additional compensation paid to employees for events other than time spent working under a regular rate will be "earned" in different ways, yet each is considered "wages earned" for purposes of section 226. Meal period and rest period compensation should be considered no differently, and nothing in the ordinary meaning of the phrase "wages earned" suggests a contrary construction is appropriate. The legislative history further supports this construction.

B. Section 226 Was Enacted to Prevent Employers from Shortchanging Employees

As a result of increased taxes and employee contributions to the war effort, section 226 was enacted in 1943 and provided the following:

> Every employer shall semimonthly or at the time of each payment of wages furnish each of his employees either as a part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing all deductions made from such wages; provided, all deductions made on written orders of the employee may be aggregated and shown as one item.

(Stats.1943, ch. 1027, § 1, p. 2965.) Section 226 was amended in 1976 to revise the items required on a wage statement and to permit injured employees the right to recover specified damages for employers' knowing and intentional failure to comply. (MFJN 0221.) Although commonly referred to today as itemized wage statements, the 1976 amendments offered a minor but notable distinction, emphasizing that the focus of section 226 should be the information provided to employees. (Compare MFJN 0213 and 0215.)

Concerned with the lack of information and the communication of improper information, the Legislature stated the "purpose of requiring greater wage stub information is to insure that employees are adequately informed of compensation received and are *not shortchanged by their employers.*" (MFJN 0227, 0229, italics added; see also MFJN 0232.) With respect to the information required, the 1976 amendments introduced "gross wages earned" and "net wages earned"—two categories of information that have been required ever since. (MFJN 0214.)

Section 226 was further amended in 2000 by Assembly Bill No. 2509 (1999-2000 Reg. Session) (Bill No. 2509), which also brought the enactment of section 226.7. As introduced and ultimately enacted, the amendments to Bill No. 2509 evidence the Legislature's simultaneous consideration of both sections 226 and 226.7.

In the first iteration of Bill No. 2509, the Legislature added subdivision (a)(9) to section 226, which required employers to include "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." (MFJN 0301.) Similarly, in introducing section 226.7's premium wage remedy, the original version of Bill No. 2509 required employers to pay an "amount equal to twice [the employee's] average hourly rate of compensation for the full length of the meal or rest periods during which the employee was required to perform any work." (MFJN 0302.) Of particular import is the Legislature's reference to, and use of, an hourly rate measure in section 226.7 concurrently with introducing the requirement of additional hourly rate information in section 226.

Whereas subdivision (a)(9) to section 226 was enacted without further modification (Compare MFJN 0301 with 0368), the payment

provision in section 226.7 was not. In the final amendments to Bill No. 2509, the Legislature changed the amount to be paid from twice the average hourly rate to "one additional hour of pay at the employee's regular rate of compensation . . . ," which matched the existing provisions of the IWC Wage Orders. (MFJN 0327-0328, 0335.) Notwithstanding, the Legislature maintained the hourly rate measure as the metric of compensation to employees who were denied lawful meal periods and rest periods. In addition to evidencing the Legislature's intent to compensate employees, it stands to reason that the hourly rate measure suggests the mechanism by which employees would and should be informed of that compensation—section 226—especially when considering the ostensible objectives to be achieved by statutory scheme.

C. Additional Extrinsic Aids Militate in Favor of Including Section 226.7 Wage Payments in Itemized Wage Statements Under Section 226

In addition to the statutory language and legislative history, this Court may look to additional extrinsic aids, including the ostensible objects to be achieved by the statute and the evils to be remedied. (*People v. Jefferson* (1999) 21 Cal.4th 86, 94.) "Section 226, subdivision (a), requires the employer to document the basis of employee compensation payments . . . ." (*Gattuso*, *supra*, 42 Cal.4th at p. 574.) Section 226.7, subdivision (c) requires the employer to compensate employees for missed meal periods and rest periods. (*Murphy*, *supra*, 40 Cal.4th at pp. 1110-1111.) If the purpose of section 226, subdivision (a) is to ensure that employees are adequately informed of their compensation and not shortchanged by their employers (*Soto v. Motel 6 Operating, L.P.* (2016) 4 Cal.App.5th 385, 392), it follows that employees should be informed that the employer has complied

with the law and satisfied its compensatory obligation under section 226.7 when meal periods and/or rest periods are denied.

The operation of the statutory scheme in Chapter 1 (Payment of Wages) demonstrates both the simplicity and sensibility of the Legislature's thinking. Employers must pay employees twice a month on designated paydays. (§ 204, subd. (a).) At the time of payment, employers must furnish employees with an itemized wage statement setting forth specific information. (§ 226, subd. (a).) If an employee is terminated or resigns, an employer must pay the employee all remaining wages owed and due. (§§ 201-203.) These are distinct legal obligations under the Labor Code.

The inclusion of premium wages owed under section 226.7 does not complicate matters. If one follows the Legislature's framework, the employer pays the premium wages in the pay period during which the section 226.7 violation occurred and records payment of the premium wage in the employee's wage statement. If such actions are taken by an employer, no additional wages will be owed to the employee upon separation of employment under sections 201-203.

The Court of Appeal's holding that neither section 203 nor section 226 applies to premium wages under section 226.7 frustrates the practical mechanism contemplated by the statutory scheme through which payment of these wages would ever be made during the course of employment or properly recorded (i.e., through payroll as reflected in an itemized wage statement).[14] Further, in finding that such wages need not be paid upon separation of employment, the Court of Appeal opinion stands at odds with

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[14] With respect to deductions from such premium wages under section 226.7, the Internal Revenue Service considers them "wages for purposes of the FICA, FUTA, and income tax withholding provisions of the [Internal Revenue] Code." (MFJN 0634-0635.)

the overriding public policy supporting the prompt payment of wages both during and upon separation of employment.

Spectrum will undoubtedly attempt to recast the interaction of these related provisions as "penalties-on-top-of-penalties" or the "piggy-backing" of statutory penalties. If so, Spectrum would underscore the evils to be remedied regarding the non-provision of meal periods and rest periods—that is, that many employers, like Spectrum, make no effort to pay premium wages for missed meal or rest periods during the course of employment or upon separation therefrom. Rather, employers wait for an enforcement action against them pursuant to section 226.7 and then claim that the additional penalties available for noncompliance with sections 203 and 226 constitute an unfair stacking of penalties. This framing fails to acknowledge that sections 203, 226, and 226.7 prescribe distinct statutory obligations for employers, and the alleged "stacking" of penalties results from the employer's wholesale failure to comply with its various statutory obligations. Sections 203 and 226 are not simply "gotcha" penalties piled onto a hapless employer's simple failure to provide a required break. Sections 203 and 226 represent separate worker protections. If the employer had paid the resulting premium wages when earned (in accordance with section 226.7) and informed the employee that it had done so (in accordance with section 226), there would be no section 203 violation upon separation of employment. The Legislature enacted these independent statutory obligations with the intention that employers would comply with each. The employer who violates all three is hard pressed to complain when all three remedies are levied.

IV. THIS COURT SHOULD HOLD THAT PAYMENTS OWED UNDER SECTION 226.7, AS WAGES, ARE SUBJECT TO TEN PERCENT PREJUDGMENT INTEREST

When possible, the statutory "codes are to be read together and blended into each other as though there was but a single statute . . . .' " (*Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 389, citing *Lara v. Board of Supervisors* (1976) 59 Cal.App.3d 399, 408-409.) Since enactment of the Labor Code in 1937, Civil Code section 3289 has recognized the contractual nature of the employment relationship as codified in section 2750.[15] With respect to the payment of wages, "it is enough to observe that strong and persuasive authority favor[s] the application of Civil Code section 3289" to section 226.7 claims irrespective of the enactment of section 218.6.[16] (*Bell*, *supra*, 135 Cal.App.4th at p. 1146.)

Owing to the Court of Appeal's departure from *Murphy* and its treatment of section 226.7 premium pay as something other than wages, it reversed the trial court's award of prejudgment interest at ten percent under Civil Code section 3289, subdivision (b). (See *Naranjo II*, *supra*, 40 Cal.App.5th at pp.475-476.) Although the Court of Appeal misconstrued the trial court's rationale,[17] it was its hasty repudiation of *Bell*'s premise

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[15] Section 2750 defines the contract of employment as "a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer or a third person." (§ 2750.)

[16] Civil Code section 3289(b) provides "[i]f a contract entered into after January 1, 1986 does not stipulate a legal rate of interest, the obligation shall bear interest at a rate of 10 percent per annum after a breach."

[17] The trial court did not award prejudgment interest at the rate of ten percent pursuant to section 218.6. (*Id.* at p. 475.) The trial court found that

that caused the Court of Appeal to reverse the trial court. Without more, the Court of Appeal dismissed *Bell*, summarily concluding that "[t]his is not a wage case, and *Bell* has no application." (*Id.* at p. 475.) In doing so, it ignored the long-standing recognition of the contractual nature of the employment relationship that warrants application of the contract interest rate set forth in Civil Code section 3289, subdivision (b).

A. The Contractual Nature of the Employment Relationship Supports Prejudgment Interest at Ten Percent

It has long been recognized by this Court that "[t]he contract of employment must be held to have been made in the light of, and to have incorporated, the provisions of existing law." (*Lockheed Aircraft Corp v. Superior Court* (1946) 28 Cal.2d 481, 486.) As this premise was explained by the Court years ago in the context of wages:

> Any action by a worker against a contractor for wages must necessarily be based on the worker's contractual relationship with the contractor, for absent an express or implied contractual relationship with the worker, the contractor has no duty to pay that worker any wages. *Thus, a worker's action against an employer for unpaid statutorily required wages sounds in contract.*

(*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 969, fn. 5, italics added.) Recently, these fundamental benefits of the contract of employment were reaffirmed when measured against the working relations of an independent contractor:

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meal period premiums are wages subject to ten percent prejudgment interest under Civil Code section 3289, subdivision (b), based on the rationale of *Bell*. (9 JA 1986-1987.)

> [I]f a worker should properly be classified as an employee, the hiring business bears the responsibility of paying federal Social Security and payroll taxes, unemployment insurance taxes and state employment taxes, providing worker's compensation insurance, and, most relevant for the present case, complying with numerous state and federal statutes and regulations governing the wages, hours, and working conditions of employees. The worker then obtains the protection of the applicable labor laws and regulations.

(*Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, 912.)

The breach-of-contract rate of prejudgment interest prescribed in Civil Code section 3289, subdivision (b) applies to claims under section 226.7 because the claim itself is rooted in the contractual nature of the employment relationship.[18] But for one's status as an employee, the right to such a claim would not exist. As noted in *Bell*, application of this interest rate for violations of the Labor Code is "based on the principle that the employment relationship is itself 'fundamentally contractual'" (*Bell*, *supra*, 135 Cal.App.4th at p. 1146, citing *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 335; Lab. Code section 2750.) The breach-of-contract rate for prejudgment interest has long been "the appropriate rate for unpaid wage claims because of the contractual nature of the employment relationship." (*Id.* at p. 1142.) *Bell*'s rationale applies equally to premium wages owed for

[18] To be clear, Plaintiff has not and is not requesting an award of prejudgment interest under section 218.6, nor asking this Court to consider application of section 218.6 to claims under section 226.7. Plaintiff requests that this Court consider the appropriate interest rate irrespective of section 218.6.

violation of section 226.7 because the remedy is unquestionably a wage.[19] (*Murphy*, *supra*, 40 Cal. 4th at p. 1099; *Kirby*, *supra*, 53 Cal.4th at p. 1257.)

B. An Award of Prejudgment Interest at Ten Percent Assures Uniform Treatment of Claims in Civil Actions and Administrative Proceedings

Section 98.1, subdivision (c) governs the interest rate applied to wage claims in administrative proceedings, and provides that "interest on all due and unpaid wages [shall accrue] at the same rate as prescribed by subdivision (b) of Section 3289 of the Civil Code." (§ 98.1, subd. (c); *Bell*, *supra*, 135 Cal.App.4th at p. 1149.) Section 98.1 was amended by Bill No. 2509 in order to establish "the rate of interest at 10% in *both* administrative and civil court cases." (MFJN 0312, italics added.) The DLSE unequivocally considers a claim under section 226.7 as an action for wages. (MFJN 0082 [DLSE Policies and Interpretations Manual].) Although this Court need not defer to internally-generated interpretations by the DLSE (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal. 4th 557, 572), Bill No. 2509's legislative history suggests that the Legislature's intent was to ensure uniformity in the prejudgment interest rate applied to claims for wages. The interest owed for a section 226.7 violation should be no different, whether the claim was sought in a civil action or an administrative proceeding.

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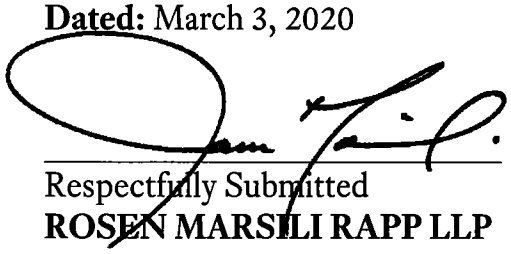
[19] Given the contractual nature of the employment relationship, lower courts similarly deny claims for punitive damages arising from the breach of an employer's statutory obligation. (*Brewer v. Premier Golf Properties, LP* (2008) 168 Cal.App.4th 1243, 1255-1256 ["breach of an obligation arising out of an employment contract, even when the obligation is implied in law, permits contractual damages but does not support tort recoveries"].)

CONCLUSION

Premium payments owed to employees under section 226.7 are wages. The opinion of the Court of Appeal must be reversed with respect to the Sections II and III. This Court should hold that employers are required to treat section 226.7 premium wages in the same manner as all other wages with respect to sections 201-203 and 226 or be subject to the penalties provided by those sections. Further, this Court should hold that the applicable prejudgement interest rate on section 226.7 wages is ten percent in accordance with Civil Code section 3289, subdivision (b). The opinion of the Court of Appeal should be affirmed in all other respects.

Dated: March 3, 2020



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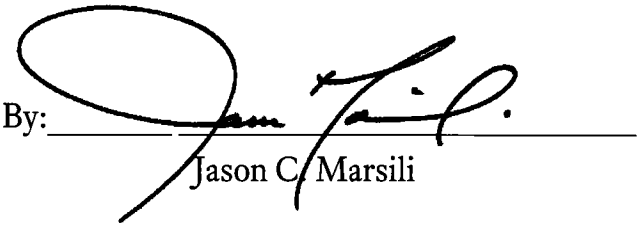
CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c)(l) of the California Rules of Court, the undersigned counsel for Respondent and Cross-Appellant certifies that this opening brief contains **[10,166]** 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 3rd day of March, 2020.

By: 

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I, Stephen Moore , declare that I am not a party to the action, am over 18 years of age and my business address is: 626 Wilshire Blvd., Suite 820, Los Angeles, California 90017.

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I declare under penalty of perjury that the foregoing is true and correct:

Signature: Stephen Moore