Case No. S258966

In the Supreme Court of the State of California

Gustavo Naranjo,
On behalf of himself and all others similarly situated,
Plaintiff-Respondent,

v.

Spectrum Security Services, Inc.,
Defendant-Appellant.

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

Application of California Employment Lawyers Association to File Amicus Curiae Brief in Support of Respondent Naranjo; Amicus Curiae Brief

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Application to File Amicus Curiae Brief

The California Employer Lawyers Association ("CELA") respectfully requests leave to file the attached amicus curiae brief in support of Plaintiff-Respondent Gustavo Naranjo.

CELA is an organization of California attorneys whose members primarily represent employees in a wide range of employment cases, including individual, class, and representative actions enforcing California's wage-and-hour laws. CELA has a substantial interest in protecting the statutory and common law rights of California workers and ensuring the vindication of the public policies embodied in California employment laws. The organization has taken a leading role in advancing and protecting the rights of workers, which has included submitting amicus briefs and letters and appearing before this Court in employment rights cases such as *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, *Gentry v. Superior Court* (2007) 42 Cal.4th 443, *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522, and *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903.

CELA's amicus brief endeavors to aid this Court's decision-making process by discussing the decisions of the federal courts concerning the questions on review. The federal courts have addressed whether waiting-time and wage-statement penalties may be premised on meal- and rest-break violations to a far greater extent than the state courts. And the overwhelming majority of federal decisions have answered that question in the affirmative. How most

courts have approached and answered the questions raised by this case should be of interest to this Court and will help this Court in reaching a decision that most respects the language, history, and purpose of the wage-and-hour provisions at issue.[1]

For these reasons, CELA respectfully requests leave to file the brief combined with this application.

DATED: August 10, 2020

EHLERT HICKS LLP

BY: /s/ Allison L. Ehlert
Allison L. Ehlert

Counsel for Amicus Curiae
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[1] No party or counsel for a party in this proceeding authored the proposed amicus brief in any part, and no such party or counsel, nor any other person or entity other than amicus curiae, made any monetary contribution intended to fund the proposed brief's preparation or submission. (See Cal. Rules of Court, rule 8.520(f)(4).)

CELA's Amicus Curiae Brief

Introduction

Dozens of federal courts have addressed the questions under review and can help inform this Court's decision-making. Indeed, there are *more than 35* federal decisions addressing whether waiting-time and wage-statement penalties may be premised on meal- and rest-break violations. In contrast, there are fewer than six State Court of Appeal decisions, published and unpublished, on the same subject.[2] The federal decisions have been issued by more than 25 different judges in all four federal district courts in California.

The federal courts have overwhelmingly concluded that waiting-time and wage-statement penalties are indeed recoverable in connection with meal- and rest-break violations (see footnote 3). When the vast majority of judges to consider an issue agree on the proper result, their combined wisdom can provide meaningful assistance to this Court in undertaking its own analysis. That is especially true when, as described below, the federal decisions reflect faithful application of this Court's precedents in *Murphy v. Kenneth Cole Prods., Inc.* (2007) 40 Cal.4th 1094, and *Kirby v. Immoos Fire Prot., Inc.* (2012) 53 Cal.4th 1244, and also take seriously long-established principles for construing California wage-and-hour law.

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[2] In addition to the decision below, the State Court of Appeal decisions include (1) *Ling v. P.F. Chang's China Bistro, Inc.* (2016) 245 Cal.App.4th 1242; (2) *Betancourt v. OS Restaurant Services, LLC* (2020) 49 Cal.App.5th 240, and (3) *Maroot v. Insulation Contracting and Supply* (Aug. 7, 2019) [nonpub. opn.] 2019 WL 3725897. *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, does not address the precise questions here, but it is relevant insofar as it held (incorrectly) that a wage statement need only accurately report what was actually *paid* to an employee, not what was actually *owed*.

Thus, even though they are merely persuasive, and not binding, the numerous decisions of the federal courts that have addressed the questions under review can help improve this Court's decision-making.

ARGUMENT

A. The Great Weight of Federal Authority Holds That Premium Payments Required by Section 226.7 Are "Wages" That Trigger Waiting-Time and Wage-Statement Penalties.

More than 20 federal decisions hold that waiting-time penalties and/or wage-statement penalties may be recovered by plaintiffs in connection with meal- and rest-break violations.[3] These decisions are

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[3] The cases holding that either waiting-time penalties or wage-statement penalties (or both) are available to plaintiffs who succeed on meal- or rest-break claims include: (1) *Abad v. General Nutrition Centers, Inc.* (C.D. Cal. March 7, 2013, No. 09-00190) 2013 WL 4038617; (2) *Avilez v. Pinkerton Gov't Servs.* (C.D. Cal. 2012) 286 F.R.D. 450; (3) *Azpeitia v. Tesoro Refining & Marketing Co. LLC* (N.D. Cal. July 21, 2017, No. 17-CV-00123) 2017 WL 3115168; (4) *Berlanga v. Equilon Enterprises LLC* (N.D. Cal. Aug. 31, 2017, No. 17-CV-00282) 2017 WL 3782245; (5) *Bishop v. Boral Industries, Inc.* (S.D. Cal. Sept. 9, 2019, No. 18-CV-02701) 2019 WL 4261975; (6) *Bravo v. On Delivery Services* (N.D. Cal. May 25, 2018, No. 18-CV-01913) 2018 WL 2387835; (7) *Brewer v. General Nutrition Corporation* (N.D. Cal. Aug. 27, 2015, No. 11-CV-3587) 2015 WL 5072039; (8) *Castillo v. Bank of America National Assoc.* (C.D. Cal. Feb. 1, 2018, No. 17-0580) 2018 WL 1409314; (9) *Espinoza v. Domino's Pizza, LLC* (C.D. Cal. Feb. 18, 2009, No. 07-1601) 2009 WL 882845 (10) *Finder v. Leprino Foods Co.*(E.D. Cal. March 12, 2015, No. 13-CV-2059) 2015 WL 1137151; (11) *Frausto v. Bank of America National Assoc.* (N.D. Cal. Aug. 2, 2018, No. 18-CV-01983) 2018 WL 3659251; (12) *Hall v. Western Refining Retail, LLC* (C.D. Cal. Sep. 19, 2019, No. 19-CV-00855) 2019 WL 7940668; (13) *Hildebrandt v. TWC Administration LLC* (C.D. Cal. March 18, 2015, No. 13-02276) 2015 WL 12911754; (14) *In re Autozone, Inc. Wage and Hour Employment Practices Litigation* (N.D. Cal. Aug. 10, 2016, No. 10-MD-02159) 2016 WL 4208200; (15) *Lopez v. Aerotek, Inc.*

anchored in this Court's ruling in *Murphy* that the premium payments mandated by Labor Code section 226.7 are "wages." (See e.g., *Abad*, *supra*, 2013 WL 4038617, at p. *3; *Avilez*, *supra*, 286 F.R.D. at p. 464; *Berlanga*, *supra*, 2017 WL 3782245, at p. *5; *Hall*, *supra*, 2019 WL 7940668, at p. *3; *In re Autozone*, *supra*, 2016 WL 4208200, at p. *6; *Lopez*, *supra*, 2016 WL 11505588, at p. *3.) Many district

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(C.D. Cal. March 2, 2016, No. 14-00803) 2016 WL 11505588; (16) *Ortega v. Watkins and Shepard Trucking, Inc.* (C.D. Cal. March 27, 2019, No. 18-2414) 2019 WL 2871161; (17) *Ortiz v. Amazon.com LLC* (N.D. Cal. Jan. 16, 2018, No. 17-CV-03820) 2018 WL 8221267; (18) *Perez v. Performance Food Group, Inc.* (N.D. Cal. March 23, 2016, No. 15-CV-02390) 2016 WL 1161508); (19) *Ricaldai v. U.S. Investigations Services, LLC* (C.D. Cal. 2012) 878 F.Supp.2d 1038; (20) *Rodriguez v. Cleansource, Inc.* (S.D. Cal. Aug. 20, 2015, No. 14-CV-0789) 2015 WL 5007815); (21) *Suarez v. Bank of America Corporation* (N.D. Cal. Aug. 2, 2018, No. 18-CV-01202) 2018 WL 3659302; (22) *Swanson v. USProtect Corp.* (N.D. Cal. May 10, 2007, No. 05-602) 2007 WL 1394485; (23) *Thomas-Byass v. Michael Kors Stores (California), Inc.* (C.D. Cal. Sept. 16, 2015, No. 15-369) 2015 WL 13756100; (24) *Valdez v. Harte-Hankes Direct Marketing/Fullerton, Inc.* (C.D. Cal. Dec. 21, 2017, No. 17-0525) 2017 WL 10592135.

Two other cases also fall generally in this category. In *Bellinghausen v. Tractor Supply Co.* (N.D. Cal. Feb. 3, 2014, No. C-13-02377) 2014 WL 465907, the court undertook an extensive analysis of whether waiting-time and wage-statement penalties may be recovered in connection with section 226.7 violations. It ultimately declined to dismiss the plaintiff's waiting-time and wage-statement claims but also declined to issue a definitive ruling on the availability of these forms of relief. In *Parson v. Golden State FC, LLC* (N.D. Cal. May 2, 2016, No. 16-00405) 2016 WL 1734010, the court held that waiting-time and wage-statement penalties could be recovered in connection with Labor Code section 204 violations. The same judge (Judge Tigar) later adopted this reasoning to hold that these penalties are recoverable in connection with section 226.7 violations.

courts have pointed to this Court's comprehensive analysis in *Murphy* as a reason to rely on it as an authoritative guide: *Murphy* arrived at its "wages" conclusion only after an extensive review of the statutory language, administrative and legislative history, and compensatory purpose of section 226.7. (*Murphy*, *supra*, 40 Cal.4th at p. 1114; *Abad*, *supra*, 2013 WL 4038617, at p. *3; *Brewer*, *supra*, 2015 WL 507239, at p. *18; *In re Autozone*, *supra*, 2016 WL 4208200, at p. *6; *Ortiz*, *supra*, 2018 WL 8221267, at p. *3.)

The majority of federal courts have correctly concluded that *Kirby* did not disturb *Murphy*'s holding that section 226.7 premium payments are "wages," and that *Kirby* concerned a different issue. They have taken this Court at its word when it said in *Kirby* that nothing about its ruling there is at odds with *Murphy*. (*Kirby*, *supra*, 53 Cal.4th at p. 1257; *Abad*, *supra*, 2013 WL 4038617, at p. *3; *Avilez*, *supra*, 286 F.R.D. at p. 465; *Berlanga*, *supra*, 2017 WL 3782245, at p. *5; *Bishop*, *supra*, 2019 WL 4261975, at p. *5; *Dawson*, *supra*, 2017 WL 7806561, at p. *5; *Hall*, *supra*, 2019 WL 7940668, at p. *3; *Lopez*, *supra*, 2016 WL 11505588 at p. *3; *Ortiz*, *supra*, 2018 WL 8221267, at p. *3.) Indeed, the federal courts have reconciled the two cases by distinguishing between the remedy afforded by section 226.7 (a wage) and the nature of the violation (non-compliant meal and rest breaks). (*Kirby*, *supra*, 53 Cal.4th at p. 1257.) Echoing *Kirby*'s own explanation as to why its holding is harmonious with *Murphy*, one court has put it this way: "*Murphy* addresses whether the remedy available under section 226.7 is a wage; while *Kirby* addresses whether the legal violation defined by section 226.7 is for nonpayment of wages." (*Parson*, *supra*, 2016 WL 1734010, at p. *4.)

The federal courts have thus relied not only on *Murphy* and its thorough analysis as to why premium payments constitute "wages," but they have also relied on this Court's assurance that *Kirby* did not abrogate *Murphy*. (See e.g., *Abad*, *supra*, 2013 WL 4038617, at p. *3 [stating that "[t]he *Kirby* court affirmed the holding in *Murphy*" and "[t]hus, the holding in *Murphy* remains controlling in this case"]; *Avilez*, *supra*, 286 F.R.D. at p. 465 ["*Kirby* reaffirms *Murphy* . . . ."]; *Brewer*, *supra*, 2015 WL 5072039, at p. *18 [stating that "*Kirby* did not abrogate *Murphy*"]; *Lopez*, *supra*, 2016 WL 11505588, at p. *3 [stating that *Murphy* held "that § 226.7 premiums are wages with a 'central compensatory purpose,'" and that this Court "affirmed this holding in *Kirby*"] [quoting *Murphy*, *supra*, 40 Cal.4th at p. 1110].)

Further, the federal court rulings on the side of plaintiffs in this area have honored the longstanding principle that the definition of "wages" in California law is to be broadly construed. (See e.g., *Castillo*, *supra*, 2018 WL 1409314, at p. *6; *Frausto*, *supra*, 2018 WL 3659251, at p. *7; *Hall*, *supra*, 2019 WL 7940668 at p. *4; *Suarez*, *supra*, 2018 WL 3659302, at p. *10.) *Murphy* highlights the breadth of what "wages" means, defining it to include "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation." (*Murphy*, *supra*, 40 Cal.4th at p. 1103; accord *Brewer*, *supra*, 2015 WL 5072039 at p. *18.)

Having concluded that section 226.7 premium payments are "wages," the vast majority of federal courts have held that they must be itemized on wage statements and timely paid upon an employee's separation from employment, consistent with Labor Code section 226, subdivision (a) and section 203. These courts have reasoned that

since the plain language of both section 226, subdivision (a) and section 203 address the failure to timely pay and record "wages," premium payments ("wages" according to both *Murphy* and *Kirby*) necessarily fall within their ambit.[4] To hold otherwise would be to draw an unwarranted distinction between premium-pay wages under section 226.7 and other types of wages. The *Parson* court, for example, determined that "[n]othing in *Murphy* or *Kirby* suggests that wages awarded under section 226.7 be treated any differently than other wages earned by the employee." (*Parson*, *supra*, 2016 WL 1734010 at p. *4.) Indeed, it would be inconsistent to hold that an employee who has suffered a violation of section 226.7 is entitled to a wage payment, but is somehow *not* entitled to have that wage documented on her pay stub and timely paid upon her resignation or termination. (*Bellinghausen*, *supra*, 2014 WL 465907, at p. *8; see also *Berlanga*, *supra*, 2017 WL 3782245 at p. *5 ["The Court finds the California Supreme Court, having characterized payments for missed rest periods to be wages for one purpose under the Labor Code [i.e., determining the statute of limitations that governs section 226.7

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[4] Labor Code section 203 provides:

> If an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

Labor Code section 226, subdivision (a) provides that employers must furnish to their workers "an accurate itemized statement in writing showing," among other things, "gross wages earned," "total hours worked," "net wages earned," and "all applicable hourly rates in effect during the pay period."

actions] would not define those payments to be something other than wages for other purposes under the Labor Code"]; *Ortiz*, *supra*, 2018 WL 8221267 at p. *4 [stating that at least without further guidance from this Court, there is no "principled basis to conclude that wages as used in Section 226(a) should not have the meaning adopted in *Murphy*"].)

Even a cursory review of the numerous federal court decisions that have sided with plaintiffs like Naranjo show that they have faithfully and reasonably applied this Court's precedents and the principles that have long animated California wage-and-hour law. The reasoning of all these courts across dozens of opinions and over more than a decade are consistent with this Court's own reasoning and should not be displaced by this Court.[5]

[5] Spectrum argues that although the Legislature has amended sections 203 and 226 several times since the adoption of section 226.7 in 2000, it has never expressly said that the waiting-time and wage-statement penalties provided by those provisions apply to section 226.7 violations. Contrary to Spectrum's contention, the lack of specific legislative action on this front supports Naranjo. The Legislature presumably knows that the vast majority of courts to consider whether waiting-time and wage-statement penalties may be premised on section 226.7 violations have concluded that they can be. If the Legislature disagreed with these decisions, then it would have had a reason to amend sections 203 and/or 226.7 to express disapproval of those decisions and clarify that waiting-time and wage-statement penalties are *not* available. The Legislature's silence is thus best interpreted as support for the weight of authority holding that these penalties *are* available.

B. The Federal Decisions Holding That Plaintiffs Are Barred From Recovering Waiting-Time and Wage-Statement Penalties Reflect a Cramped Interpretation of the Labor Code That This Court Has Never Endorsed.

The comparatively few (approximately ten) federal decisions that have deemed waiting-time and wage-statement penalties prohibited in the context of section 226.7 violations have construed *Kirby* to dictate this result.[6] The leading case is *Jones*, *supra*, 2012 WL 3264081. The court there held that *Kirby* curtailed *Murphy*, even though this Court expressly disavowed any such intention. *Jones* reasoned that waiting-time and wage-statement penalties cannot be recovered in connection with section 226.7 violations because these violations do not concern the failure to pay wages owed, but rather the

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[6] The decisions holding that waiting-time and wage-statement penalties are not available include: (1) *Culley v. Lincare Inc.* (E.D. Cal. 2017) 236 F. Supp.3d 1184; (2) *Frieri v. Sysco Corporation* (S.D. Cal. Dec. 12, 2016, No. 16-CV-1432) 2016 WL 7188282; (3) *Guerrero v. Halliburton Energy Services, Inc.* (E.D. Cal. Nov. 2, 2016, No. 16-CV-1300) 2016 WL 6494296; (4) *Henryhand v. Digital Sys. LLC* (C.D. Cal. May 19, 2014, No. 13-02735) 2014 WL 11728721; (5) *Hernandez v. Houdini, Inc.* (C.D. Cal. Mar. 21, 2017, No. 16-1825) 2017 WL 8223987; (6) *Jones v. Spherion Staffing LLC* (C.D. Cal. Aug. 7, 2012, No. 11-06462) 2012 WL 3264081; (7) *Nguyen v. BaxterHealthcare Corp.* (C.D. Cal. Nov. 28, 2011, No. 10-CV-01436) 2011 WL 6018284; (8) *Partida v. Stater Bros. Markets* (C.D. Cal. Feb. 19, 2019, No. 518-CV-02600) 2019 WL 1601387; (9) *Pyara v. Sysco Corporation* (E.D. Cal. July 20, 2016, No. 15-CV-01208) 2016 WL 3916339; (10) *Singletary v. Teavana Corporation* (N.D. Cal. May 2, 2014, No. 13-CV-01163) 2014 WL 1760884.

Two cases—*Dawson v. Hitco Carbon Composites, Inc.* (C.D. Cal. Aug. 3, 2017, No. 16-7337) 2017 WL 7806561, and *Pena v. Taylor Farms Pacific, Inc.* (E.D. Cal. Apr. 23, 2014, No. 13-CV-01282) 2014 WL 1665231—hold that waiting-time penalties are recoverable in connection with meal- and rest-break violations, but wage-statement penalties are not.

failure to provide legally compliant meal and rest breaks. (*Id.* at p. *9; see also *Singletary*, *supra*, 2014 WL 1760884, at p. *4 [concluding that *Kirby* forecloses the recovery of waiting-time penalties premised on rest-break violations because the "wrong at issue" under section 226.7 is the failure to provide compliant rest breaks, not the failure to pay wages].) *Jones* interpreted *Kirby* to mean that "the wrongdoing by the employer is more than the failure to pay wages; it is a failure to ensure the employee's health and wellbeing through reasonable working conditions." (*Jones*, *supra*, 2012 WL 3264081, at p. *8.)

But this reasoning is not persuasive and has been roundly rejected by most of the *Jones* court's sister courts (see section A above). Irrespective of the *nature* of a section 226.7 violation, once it has been committed, the remedy is a wage and there is no reason to distinguish between types of wages so that some are subject to waiting-time and wage-statement penalties and others are not. As the *Parson* court explained in rejecting *Jones* and its progeny,

> [i]f the amounts due are classified by law as wages and are not properly paid to the employee under the applicable Labor Code section, the employer has presumably committed a violation—regardless of whether the wages are owed to the employee due to hours of labor, additional overtime pay, an award of California law, or some other reason.

(*Parson*, *supra*, 2016 WL 1734010, at p. *5.) Put simply, *Kirby* is concerned with characterizing the nature of section 226.7 claims. But this Court never said, in *Kirby* or elsewhere, that once a meal- or rest-break violation occurs—entitling the plaintiff to a wage—the employer is not subject to all the same penalties for nonpayment of

wages as would exist under any Labor Code provision for nonpayment of wages. (See e.g., *Avilez*, *supra*, 286 F.R.D. at p. 465 [stating that "the sole issue that was decided in *Kirby* was whether a prevailing party on a Section 226.7 claim can seek attorneys' fees under California Labor Code Sections 218.5 or 1194"].)

Jones also concluded—wrongly—that a rule allowing meal- and rest-break plaintiffs to recover waiting-time and wage-statement penalties would unfairly result in "an improper, multiple recovery." (*Jones*, *supra*, 2012 WL 3264081, at p. *9.) Spectrum cites the following hypothetical from *Jones* that supposedly shows that plaintiffs would obtain an unjustified windfall: If a plaintiff who earned $10 an hour was forced to return from lunch one minute early and was not paid the premium required by section 226.7, then she would be permitted to collect the following: (1) the $10 premium pay under section 226.7, subdivision (b); (2) $2,400 in waiting-time penalties for 30 days; and (3) actual damages or $50, whichever was greater, under section 226, subdivision (e) for the failure to itemize the premium pay on the employee's wage statement. (*Jones*, *supra*, 2012 WL 3264081, at p. *9.)

Jones and Spectrum regard this as excessive, but as other courts have correctly pointed out, this is precisely how the protections of the Labor Code are intended to work to incentivize employers to comply, and fully compensate employees when they do not. "[T]he 'double recovery' scheme identified in *Jones* appears no different from what an employee would be entitled to for an employer's failure to pay and properly document overtime or minimum wages." (*Bellinghausen*, *supra*, 2014 WL 465907, at p. *8; *accord Parson*, *supra*, 2016 WL 1734010, at p. *5.) The *Jones* hypothetical is thus simply "an accurate

depiction of an employer's liability under the Labor Code." (*Bellinghausen*, *supra*, 2014 WL 465907, at p. *8.)

Most of the cases that reject waiting-time and wage-statement claims predicated on section 226.7 violations follow the logic of *Jones*. (See *Culley*, *supra*, 236 F. Supp.3d at pp. 1195-1196; *Frieri*, *supra*, 2016 WL 7188282, at p. *6; *Guerrero*, *supra*, 2016 WL 6494296, at p. *8; *Henryhand*, *supra*, 2014 WL 11728721, at pp. *13-*14; *Pyara*, *supra*, 2016 WL 3916339, at *7; *Singletary*, *supra*, 2014 WL 1760884, at pp. *3-*4.) With respect to wage-statement penalties, in particular, some federal cases have concluded that they are not available based on the language of section 226(a), which says that employers must itemize "wages earned." *Dawson* and *Pena*, for example, reason that premium payments are not "wages earned," because they do not compensate employees for time spent working. (*Dawson*, *supra*, 2017 WL 7806561, at pp. *4-*5; *Pena*, *supra*, 2014 WL 1665231, at pp. *9-*10.) In so holding, *Dawson* and *Pena* draw on *Murphy*, where, according to *Dawson*, this Court "distinguished payments made pursuant to § 226.7 from 'wages earned' when it defined them as 'premium wages' intended to compensate employees 'for events *other than* time spent working.'" (*Dawson*, *supra*, 2017 WL 7806561, at p. *7.)

Dawson and *Pena* are wrong. Although *Murphy* described premium pay as compensation for "events other than time spent working," in so doing it analogized section 226.7 premium pay to overtime pay, reporting-time pay, and split-shift pay. (*Murphy*, *supra*, 40 Cal.4th at pp. 1112-1113.) If adopted, the reasoning of *Dawson* and *Pena* would mean that these types of pay would also not need to appear on wage statements because they too entail compensation for

things other than strictly working. Removing all of those forms of compensation from the ambit of section 226, subdivision (e) would entirely eviscerate the statute's purpose of accurately informing workers of their wages and enabling them to verify that they have received the pay to which they are entitled.[7]

In sum, the minority of federal courts that have ruled as Spectrum urges reflect an overly cramped view of the applicable Labor Code provisions. They have not reconciled *Murphy* and *Kirby* as persuasively as the courts that have ruled the other way, nor have they provided any compelling justification as to why premium wages should be treated differently from other kinds of wages.

Conclusion

The federal courts have significant experience confronting the questions under review and the overwhelming majority of those courts have agreed on the correct result—a result they have arrived at by giving California's wage-and-hour provisions the remedial, worker-protective meaning this Court requires. Indeed, the considered judgment of the majority of federal courts reflect this Court's own sound reasoning. Accordingly, like those courts, this Court should

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[7] Three other cases also conclude that section 226.7 premium wages need not appear on wage statements based on the language of section 226 but their analysis is not nearly as well developed as that of *Dawson* and *Pena*. In *Nguyen*, *supra*, 2011 WL 6018284, at p. *8, the court stated that "the plain language of Section 226(a) does not require that wage statement[s] include an itemized listing of any premium payments owed . . . for missed meal periods." *Nguyen* and the cases that summarily rely on it (see *Hernandez*, *supra*, 2017 WL 8223987, at p. *8, and *Partida*, *supra*, 2019 WL 1601387, at p. *9) ignore the fact that section 226, subdivision (a), requires employers to itemize "gross" and "net" wages, and that *Murphy* held that premium payments are "wages."

hold that waiting-time and wage-statement penalties may be predicated on section 226.7 meal- and rest-break violations.

DATED: August 10, 2020

EHLERT HICKS LLP

BY: /s/ Allison L. Ehlert
Allison L. Ehlert

Counsel for Amicus Curiae
California Employment
Lawyers Association

Certificate of Compliance

Counsel hereby certifies that pursuant to California Rule of Court 8.520(c)(1), this brief has been produced using 13-point Roman type, including footnotes, and contains 3,686 words, as calculated by the Microsoft Word software application in which it was written.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed on August 10, 2020, at Richmond, California.

/s/ Allison L. Ehlert
Allison L. Ehlert

Certificate of Service

State of California, County of Alameda:

I am employed in the County of Alameda, State of California. I am over the age of 18 years and not a party to this action. My business address is Ehlert Hicks, 2001 Addison St., Ste. 300, Berkeley, CA 94704.

On August 10, 2020, I served true and correct copies, via TrueFiling, of the Application of California Employment Lawyers Association to File Amicus Curiae Brief in Support of Respondent Naranjo; Amicus Curiae Brief on the parties to this action as follows:

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

Executed on August 10, 2020, at Richmond, California.

/s/ Allison L. Ehlert
Allison L. Ehlert

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **NARANJO v. SPECTRUM SECURITY SERVICES**
Case Number: **S258966**
Lower Court Case Number: **B256232**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **aehlert@ehlerthicks.com**

3. I served by email a copy of the following document(s) indicated below:

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8/10/2020

Date

/s/Allison Ehlert

Signature

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