No. 258966

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

GUSTAVO NARANJO, *et al.*,
Petitioner and Respondent,

v.

SPECTRUM SECURITY SERVICES, INC.,
Defendant and Appellant.

AFTER DECISION BY COURT OF APPEAL SECOND APPELLATE DISTRICT, DIVISION FOUR, CASE NO. B256232

APPLICATION FOR LEAVE TO FILE AND [PROPOSED] BRIEF OF AMICI CURIAE CALIFORNIA RURAL LEGAL ASSISTANCE FOUNDATION, LEGAL AID AT WORK, BET TZEDEK, ASIAN AMERICANS FOR ADVANCING JUSTICE – ASIAN LAW CAUCUS, CENTRO LEGAL DE LA RAZA, UC HASTINGS COMMUNITY JUSTICE CLINICS, AND WORKSAFE ON BEHALF OF RESPONDENT GUSTAVO NARANJO

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APPLICATION OF AMICI CURIAE FOR PERMISSION TO FILE BRIEF OF AMICI CURIAE

Pursuant to rule 8.520(f) of the California Rules of Court, proposed amici curiae California Rural Legal Assistance Foundation, Legal Aid at Work, Bet Tzedek, Asian Americans for Advancing Justice – Asian Law Caucus, Centro Legal de la Raza, Uc Hastings Community Justice Clinics, and Worksafe ("Amici Curiae") seek permission to file the accompanying Brief of Amici Curiae in Support of Respondent Gustavo Naranjo on the issue of whether Labor Code section 226.7 constitute wages and whether the text and purpose of Labor Code sections 203 and 226 support this Court's resolution of that issue. As demonstrated below, Amici Curiae's accompanying brief provides focused assistance to this Court. The brief expands on several points in Mr. Naranjo's merits briefing that are important to this Court's consideration.

Thus, in accordance with California Rule of Court 8.250(f)(4), no party or counsel for any party, other than counsel for Amici Curiae, has authored any part of the proposed brief or funded the preparation of the brief.

STATEMENT OF APPLICANTS' INTEREST

Amici Curiae consists of seven non-profit organizations dedicated to, among things, safeguarding and expanding legal protections to low-wage workers in California and improving their working conditions.

California Rural Legal Assistance Foundation ("CRLAF") is a nonprofit legal service provider that represents low-income individuals across rural California and engages in regulatory and legislative advocacy which promote the interest of low-wage

workers, particularly farm workers. Since 1986, CRLAF has recovered wages and other compensation for thousands of farm workers, nearly all of whom are seasonal. These workers have been subjected to illegal tactics to deny, interfere with or impede them from taking their breaks; to schemes intended to defraud them of minimum wages, contract wages and overtime wages, due to them; and been forced to endure working conditions which expose them to pesticides, heat stress, and acute and sustained ergonomic stress. The prompt payment and full payment of all wages due, including Section 226.7 premium pay, and the attendant penalties and interest, is of the outmost importance to the low-wage workers and farmworkers, including H-2A workers, whom CRLAF represents.

Legal Aid at Work (formerly the Legal Aid Society – Employment Law Center) (LAAW) is a public interest legal organization founded in 1916 that advances justice and economic opportunity for low-income people and their families at work, in school, and in the community. Since 1970, LAAW has represented low-wage clients in both individual and class action cases involving a broad range of employment-related issues, including wage theft, labor trafficking, retaliation, and discrimination. LAAW frequently appears in federal and state courts to promote the interests of clients who have experienced wage theft both as counsel for plaintiffs and as *amicus curiae*. In addition to litigating cases, LAAW assists hundreds of low-wage workers with filing administrative wage claims at the California Labor Commissioner through our Wage Rights Clinics and

advises thousands of low-wage workers on their wage rights through our Workers' Rights Clinics. Protecting low-income workers from wage theft is a core part of LAAW's work. Ensuring that these workers are paid premium wages when meal periods are not permitted and rest periods are not authorized; receive accurate itemized wage statements that include premium wages; and receive the appropriate rate of interest on wages owed are important components of this work.

Bet Tzedek—Hebrew for the "House of Justice"—was established in 1974 as a nonprofit organization that provides free legal services to Los Angeles County residents. Each year their attorneys, advocates, and staff work with more than one thousand pro bono attorneys and other volunteers to assist more than 20,000 people regardless of race, religion, ethnicity, immigrant status, or gender identity. Bet Tzedek's Employment Rights Project focuses specifically on the needs of low-wage workers, providing assistance through a combination of individual representation before the Labor Commissioner, civil litigation, legislative advocacy, and community education.

Bet Tzedek's interest in this case comes from over 15 years of experience advocating for the rights of low-wage workers in California. As a leading voice for Los Angeles's most vulnerable workers, Bet Tzedek has an interest in the correct development and interpretation of California's worker-protection laws, including the importance of ensuring that Labor Code's wage protections cover premium pay under Labor Code section 226.7. Bet Tzedek recognizes that, in providing for payment of premium

pay for missed breaks, the California legislature sought to compensate hourly workers for break time while also punishing employers of depriving their employees of statutorily-mandated duty-free breaks. To characterize premium pay as a penalty rather than a wage would eliminate premium pay's compensatory function and deprive hourly workers—many of them low-pay—of Labor Code wage-theft protections, such as penalties for not timely paying all wages due upon termination, for premium payments that they have earned.

Asian Americans Advancing Justice - Asian Law Caucus (ALC) was founded in 1972 with a mission to promote, advance, and represent the legal and civil rights of Asian and Pacific Islanders, with a particular focus on low-income members of those communities. Advancing Justice - ALC is part of a national affiliation of Asian American civil rights groups, with offices in Los Angeles, Chicago, Atlanta, and Washington DC. Advancing Justice - ALC has a long history of protecting low-wage immigrant workers through direct legal services, impact litigation, community education, and policy work. ALC's regular caseload includes pursuing meal and rest break claims on behalf of low-wage workers before the California Labor Commissioner's Office, as well as in state court.

Founded in 1969, Centro Legal de la Raza is a legal services agency protecting and advancing the rights of low-income and immigrant communities through legal representation, education, and advocacy. By combining quality legal services with know-your-rights education and youth

development, Centro Legal ensures access to justice for thousands of individuals throughout Northern and Central California. Centro Legal has an interest in the outcome of this case because its workers' rights practice provides legal assistance to hundreds of immigrant workers each year, including many workers facing the wage-and-hour violations at issue in this case.

The UC Hastings Community Justice Clinics ("CJC") is the main clinical teaching program at the University of California Hastings College of the Law. The CJC Individual Representation Clinic provides free and direct legal services to low-income clients in the Bay Area in the areas of workers' rights, criminal expungement and Social Security disability benefits. In the workers' rights arena, the CJC co-counsels with the California Department of Labor Standards Enforcement to represent low-wage workers who have been awarded a judgment in their favor at the administrative Berman hearing and their employers have appealed pursuant to Labor Code section 98.2. The CJC has represented hundreds of workers over the years, helping them recover wages and penalties owed to them for statutory violations of wage and hour law. The CJC was lead counsel in *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, a case of a worker who was denied overtime and meal and rest breaks and who began the vindication of his rights in the administrative Berman hearing process.

Worksafe, Inc. is non-profit organization that advocates for protective worker health and safety laws and effective remedies for injured workers through the legislature and courts. Worksafe

is also a Legal Support Center funded by the State Bar Legal Services Trust Fund. We engage in California state-wide policy advocacy as well as advocacy on a national level to ensure protective laws for workers. Worksafe has an interest in the outcome of this case because we advocate for the workplace rights of low wage vulnerable workers. Millions of low-wage and immigrant workers often toil long hours in harsh and hazardous work environments in California. These same workers often face misclassification, which leads to employment and labor violations such as wage theft which is rampant. Worksafe has an interest in ensuring workplace justice for all workers.

BRIEF OF AMICI CURIAE

INTRODUCTION

Labor Code section 226.7(b)[1] recognizes both the right to be provided a meal and rest period, and the right to payment for the fact that work was performed during what should otherwise be free time. An employee who does not receive a mandated rest or meal period continues to perform labor for the benefit of an employer—unpaid labor. Rest periods are by regulation considered "hours worked."[2] An employee performs free labor when he or she works during their break time, but is not paid. Meal breaks are not considered hours worked. Rather, the employee is entitled to be relieved of all duty during the meal period and, if denied a duty-free meal period, performs work during what should otherwise be free time. By requiring payment

[1] All citations are to the Labor Code unless otherwise stated.

[2] See, e.g. 8 Cal. Code Regs. § 11140(12)(a).

of an additional hour of pay, Section 226.7 not only incentivizes employers to provide rest and meal periods, but establishes additional pay to employees who are denied their mandated time.

The Court of Appeal incorrectly concluded that this additional hour of pay is not wages, reasoning that it arises from the failure of the employer to provide rest and meal periods and not directly from the workers performing labor. But employees are performing labor for time that should otherwise be relieved. The fact that this hour of pay arises as additional payment when an employee is required to work through a rest or meal period—or is otherwise under the employer's control—does not destroy the compensatory nature of Section 226.7 premium pay. The Court's decision to exclude Section 226.7 premium pay from the definition of wages when determining what statutory penalties and interest are due is both inconsistent with California's labor law enforcement approach and creates uncertainty as to how other compensation similar to Section 226.7 premium pay should be treated moving forward.

Under the lower court's construction, law-breaking employers may choose to disregard their obligation to provide meal or rest periods, and also refuse to timely pay the mandatory compensation for having failed to do so, without risk. While the worker suffers the loss of both her right to relieved time and the compensation owed her, the employer holds on to her money. The employer reduces his bottom line expenses, harming not only his employees, but undercutting law-abiding competitors while doing so. If he is sued, he need pay up only the amount that is already

owed. The decision chisels into the remedial protection framework existing for over a century, creating a crack in the foundation of protections supporting employee rights.

The Legislature rejected the common law system where: employees forfeited their wages if they did not complete their employment contract; employers paid wages at a time and manner of their choosing; and, if employees wanted payment for their wages, they had to file a lien and seek redress in Court, recovering only what they were actually owed. The Legislature and the public have moved toward implementing strong protections for workers in recovering wages earned because the prompt and full-payment of wages—and penalties for failing to do so—protects both the worker and the public. Now, the decision under review here creates a new category of wages excluded from all of the protections afforded by the Labor Code. In effect, the lower court's decision means that employees do not have the right to the prompt and full-payment of the additional hour of pay provided for by Section 226.7(b). Employees must once again rely upon an employer's largess to receive the money, not when they need it and are owed it, but at a time determined solely by the employer.

ARGUMENT

I. Section 226.7 Premium Pay Is a Wage for All Purposes under the Labor Code Even if It is Paid as Remedy.

More than a century ago, the Legislature began enacting laws to "ameliorate the working conditions" of employees and "to safeguard" their "hours of labor and the compensation to be paid

for [their] labor." (*Moore v. Indian Spring, etc. Min. Co.* (1918) 37 Cal.App. 370, 379.) Section 226.7 ameliorates employees' working conditions by requiring employers to provide meal and rest periods to meet the health and safety need recognized by the Industrial Welfare Commission ("IWC"). (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1113 (*Murphy*).) Section 226.7 also protects employees' compensation by providing for an "additional hour of pay" for each workday employees work through their rest or meal breaks. (*Id.* at 1114.) While this "additional hour of pay" is a remedy for employers' failure to provide a rest or meal period, it does not make this hour of pay any less of a "wage" than other employee compensation provided for in the Labor Code and the IWC. (See *Murphy*, *supra*, 40 Cal.4th at p. 1099; *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256 (*Kirby*).)

This Court held in *Murphy* that this additional hour of pay "constitutes a wage or premium pay." (*Murphy*, *supra*, 40 Cal.4th at p. 1099.) Premium pay for missed breaks are simply part of the legislative scheme that "assign[s] different amounts to compensate employees for certain kinds of labor or scheduling resulting in a detriment to the employee." (*Id.* at p. 1112.) In *Kirby*, this Court, in resolving a textual matter on the application of a two-way fee-shifting statute, found the gravamen of an action alleging violations of Section 226.7 claim is an action for the failure to provide rest and meal breaks, and not for the nonpayment of wages; but this Court did not reverse *Murphy*'s holding that this remedy is a wage. (*Kirby*, *supra*, 53 Cal.4th at

pp.1256-1257). Instead, this Court in *Kirby* reiterated "that the additional hour of pay remedy in section 226.7 is a liability created by statute and that liability is properly characterized as a wage." (*Id*. at p. 1257 [internal quotations omitted].)

The *Murphy* court recognized that this construction is consistent with the Legislature's intent as reflected in the Senate Rules Committee report, which described 226.7's premium pay as a wage stating that the "[f]ailure to provide meal and rest periods would subject an employer to *paying the worker one hour of wages*." (*Murphy*, *supra*, 40 Cal.4th at p. 1108, original italics.) As discussed in more detail below, the lower court's decision is at odds with this holding and this Court should reverse the Court of Appeal and find that Section 226.7 premium pay is a "wage" for all purposes under the Labor Code.

A. Section 226.7 Premium Pay Compensates Employees for Unpaid Labor and A Narrow Definition of Wages Creates Inconsistency and Rolls Back A Century of Wage Labor Protections.

In reversing the trial court, the Court of Appeal relies on a narrow definition of wages under Section 200, which contravenes the tenet that the "state's labor laws are to be liberally construed in favor of worker protection." (*Alvarado v. Dart Container Corp. of Cal.* (2018) 4 Cal.5th 542, 562.) The Courts and Legislature accord wages "special considerations…and the purpose in doing so is based on the welfare of the wage earner." (*Kerr's Catering Service v. Department of Industrial Relations* (1962) 57 Cal.2d 319, 369 (*Kerr's*).) Courts broadly construe the term "wages" to "include not only periodic monetary earnings of the employee[s]

but also other benefits to which [they are] entitled as part of [their] compensation." (*Schachter v. Citigroup, Inc.* (2009) 47 Cal.4th 610, 618, internal citations omitted.) This compensation includes, for instance, money, room, board, clothing, vacation pay, sick pay, bonuses, and profit-sharing plans. (*Ibid*., internal quotations and citations omitted.) Other forms of "wages" include enhanced payments for reporting-time, split-shift, and overtime, none of which involved a worker performing any additional labor. (*Murphy*, *supra*, 40 Cal.4th at p. 113.) Section 226.7 premium wage, like these "other benefits," are part of workers' compensation.

Based on the historical construction of California labor rights, this Court in *Murphy* rejected the cramped reading of "wages" relied upon by the lower court and urged by Respondent here. The Labor Code does not limit "wages" to refer only to compensation for labor actually performed. (*Id.* at pp. 1112-1113.) The use of the term "pay" in Section 226.7(b) and its dictionary definition is "in keeping" with the definition of wages under Section 200. (*Id*. at p. 1104.) Yet, the Court of Appeal incorrectly carved Section 226.7 premium wages out of protected pay concluding that this compensation is a remedy that falls outside the section 200 definition of wages. (See *Naranjo et al. v. Spectrum Sec. Services, Inc*. (2019) 40 Cal.App.5th 444, 473 (*Naranjo II*).) In doing so, the court ignored the nature of this compensation, as well as the Legislature's characterization of it.

The practical reality is that Section 226.7 premium wage compensates employees for unpaid labor. An employee who does

not receive a rest or meal period is harvesting crops, attending customers, cooking, building homes, waiting tables, cleaning, or washing cars—all labor—during what should be time where the employee should be relieved all duty. In the case of rest periods, the employee performs "free" work because the employee receives the same compensation for working or for being permitted to take rest periods. (*Murphy*, *supra*, 40 Cal.4th at p. 1104.) And workers that remain "on-call" during a break are also entitled to premium wages, as they are deprived of their own freedom during duty-free meal and rest periods that the Legislature and the IWC determined to be essential to worker safety. (See *Augustus v. ABM Sec. Servs., Inc.* (2016) 2 Cal.5th 257, 270 [finding that "obligations [of being on-call] are irreconcilable with employees' retention of freedom to use rest periods for their own purposes."].)

By operation of the applicable Wage Order, employees working a normal eight-hour day are entitled to receive compensation for eight hours for performing seven hours and forty minutes of labor. Meal periods, though mandated, are unpaid, and, in a normal eight-hour day, the employee is entitled to one-half hour of relieved time for the eight hours worked. If an employee is denied their rest time or mealtime, then they are entitled to be paid extra for the labor they performed during what should have been their free time. "[A]n employee is entitled to the additional hour of pay immediately upon being forced to miss a rest or meal period. In that way, a payment owed pursuant to section 226.7 is akin to an employee's immediate entitlement to payment of wages or for overtime." (*Murphy*, *supra*, 40 Cal.4th at

p. 1108.) It is irrelevant that Section 226.7 premium does not compensate employees' minute for minute, that there is no one-to-one ratio. (*Id.* at p. 1113.) When an employer does not permit an employee to take their rest or meal periods, and fails to pay the compensation due under Section 226.7, the employee not only suffers a health and safety injury, but also an economic injury.

In addition, the Court of Appeal and Spectrum's narrow interpretation of "wages" invites uncertainty and can create inconsistent results for how other employee compensation in the Labor Code and Wage Orders are to be treated. Because while Section 226.7 premium pay requirement was new, the language used to describe it was not, i.e., "hour of pay" or "regular rate." (See *Ferra, v. Loews Hollywood Hotel, LLC* (2019) 40 Cal.App.5th 1239, 1266 (conc. & dis. opn. of Edmon, P. J.) ["Where statutes appear to use synonymous words or phrases interchangeably, courts have not hesitated to attribute the same meanings to them"].) For example, dairy workers, represented by *amicus curiae* California Rural Legal Assistance Foundation, frequently work split shifts with a two to four hour break between morning milking and afternoon milking. They are not performing labor during this time, but California law recognizes that their freedom that day is, nonetheless restrained, and the employer benefits from this. In recognition of this restraint, the Wage Orders mandate that they and other workers who work split shifts are entitled to one "hour of pay." (See Industrial Welfare Commission Wage Orders 1-15, Section 4 (split shift).) Similarly, if the employee reports to work, but does not receive work, the

employee is entitled to pay "at the employee's regular rate of pay." (See Industrial Welfare Commission Wage Orders 1-15, Section § 5 (reporting time).) Under the *Naranjo* court's interpretation, split shift and reporting pay would not fall under the definition of "wages" because the obligation to pay such compensation arises out of the employer's conduct and not from labor performed. (See *Naranjo II, supra*, 40 Cal.App.5th at pp. 473-474.).

This interpretation would create uncertainty for workers and, again, invite employers to disregard these mandated payments. Employers would choose to take a chance on getting a caught knowing that they could argue that they were only liable for the actual compensation owed, and none of the attendant penalties due for the failure to pay these wages when due or to report that compensable time on wage statements. All of these wage payments are "primarily intended to compensate employees, but also [have] a corollary purpose of shaping employer conduct." (*Murphy*, *supra*, 40 Cal.4th at p. 1111.) The *Naranjo* decision invites the eradication of the "dual-purpose remedy" recognized by *Murphy* as a critical component of California labor law enforcement. (*Ibid*.)

In sum, the Court of Appeal turns back a century of legislation protecting employees' compensation. In the early twentieth century, the "public conscience" became "awakened" to the plight of the worker. (*Moore*, *supra*, 37 Cal.App. at p. 378.) New laws were enacted to secure the worker "a reasonable wage, to provide, where practical, for the enforcement by way of liens on

the product of his labor, to exempt from execution a part of his earnings, [and] to give him sanitary and otherwise safe surroundings." (*Ibid*.) While acknowledging that the employer is required to pay Section 226.7 premium wages, the *Naranjo* court strips away the century old protections[3] established by the Legislature and the IWC to safeguard employees' compensation.

Arguably, under this construction, the employer does not have to pay Section 226.7 premium wage each pay period (Section 204), repudiating the *Murphy* court's holding that the premium wage is due to the employee "immediately upon being forced to miss a rest or meal period." (*Murphy*, *supra*, 40 Cal.4th at p. 1108.) Nor would the employer be required to reflect the payment of these premium wages on wage statements (Section 226), preventing employees from determining whether the employer compensated them properly, or at all. The employer would not have to pay all unpaid premium wages immediately upon discharge (Section 201) or upon the employee quitting (Section 202). The monetary incentive for the employer to pay timely all premium wages at the end of the employment relationship (Section 203) would be lost. These Sections, the rest of the Labor Code, and the Wage Orders "induce, if not compel, the employer to keep faith with his employees and impose[] a penalty only when he commits a wrong which not only injures the employee" but also the public. (*Moore*, *supra*, 37 Cal.App. 370 at p. 380.) The Court of Appeal is creating a new hollow category of wages

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[3] These protections include, but are not limited to, Sections 204, 201, 202, 226, and 203. All of these sections work hand in hand.

tantamount to maintaining the requirement that motorists stop at a red light, but eliminating the traffic fine when they fail to do so.

B. The Court of Appeal's Decision that Section 226.7 Premium Pay is Not Wages Undermines Section 226.7's Self-Enforcement.

The IWC added an additional hour of pay under Section 226.7(b) as a self-enforcement mechanism to incentivize employers to permit employees to take their rest and meal periods. (See IWC Hearing Transcript, May 5, 2000, pp. 74-76, available at <https://www.dir.ca.gov/iwc/PUBMTG05052000.pdf>.) Redefining Section 226.7's premium pay as something other than a "wage" removes the mechanisms that support this immediate self-enforcement. These mechanisms, for example, are Sections 204, 201, 202, 206, and 203 which guarantee the prompt and full payment of Section 226.7 premium pay. Without these sections, for example, aggrieved employees are left to wait until they commence a court or administrative action to collect the premium wages owed to them and enforce their right to a rest and meal period. In effect, that immediate disincentive created by Section 226.7 disappears and workers have only the good will of their employers to insure that they are properly paid.

Amici represent low-wage workers, both workers with H-2A and H-2B visas and local Californians, for whom the immediate payment of 226.7's premium wage and self-enforcement are crucial. And as this Court recognized in *Murphy*, low-wage workers are the "likeliest to suffer violations" of meal and rest

periods. (*Murphy*, *supra*, 40 Cal.4th at pp. 1113-14.) In the last decade, California has seen an exponential increase of workers entering the state under H visas to toil California's agricultural fields[4] or to perform other non-agricultural low wage jobs[5]. These H-visa workers, who do not speak or read English, come from different countries with different laws and families dependent on their seasonal wages.[6] They silently withstand, for example,

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[4] See Martin, *The H-2A Guest Worker Program Expands in California* ARE Update 22(1) (2018) < https://s.giannini.ucop.edu/uploads/giannini_public/63/a3/63a3052b-045a-4a3b-b7b8-1383c590c40e/v22n1_4.pdf> [as of Aug. 6, 2020]; see also US. Department of Labor, Office of Foreign Labor Certification, H-2A Temporary Agricultural Program – Selected Statistics, Fiscal Year (FY) 2020 Q-Q3 <https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A_Selected_Statistics_FY2020_Q3.pdf> [as of Aug. 6, 2020].

[5] California's H-2B workers have increased from 2,130 in 2016 to 3,945 in 2020. (See Department of Labor, Employment and Training Administration, California <https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/CA.pdf> [as of Aug. 6, 2020]; see also Department of Labor, Employment and Training Administration, Performance Data, OFLC Programs and Disclosures <https://www.dol.gov/agencies/eta/foreign-labor/performance> [click on the Excel Spreadsheet link titled "H-2B FY2020 Q3.xlsx, *Amici* manually calculated the number of positions certified for 2020].) While California is not currently in the top 10 states, Maryland in 2019 was number ten with 4,022 positions certified. (See H-2A and H-2B Temporary Worker Visas, Congressional Research Service (Jun. 9, 2020) at p. 27<https://fas.org/sgp/crs/homesec/R44849.pdf> [as of Aug. 6, 2020].)

[6] See, e.g. Ripe for Reform: Abuses of Agricultural Workers in the H-2A Visa Program, Centro de Los Derechos del Migrante, Inc. (2020) <https://cdmigrante.org/wp-content/uploads/2020/04/Ripe-for-Reform.pdf> [as of Aug. 6, 2020]; Mehrotra, *et al.*, *In Trump's America, Bosses are Accused of Weaponizing the ICE Crackdown,*

isolating and precarious housing conditions and exploitative working conditions.[7] They cannot risk an employer refusing to sponsor their visa. An H-visa worker's employment is linked to an employer-sponsored visa.[8] Domestic low-wage workers, especially undocumented workers, also endure exploitative working conditions due to fear of losing their job.[9] Now, COVID-19 further aggravated the precarious financial situation of low-income families.[10] Moreover, in Amici's experience, H-visa workers and local workers refuse to come forward and prefer to remain anonymous for fear of retaliation and losing their jobs.

Bloomberg (Dec. 18, 2018) <https://www.bloomberg.com/news/features/2018-12-18/in-trump-s-america-bosses-are-accused-of-weaponizing-the-ice-crackdown> [as of Aug. 6, 2020];

[7] Ibid.

[8] See Ripe for Reform, *supra*, at p. 4.

[9] See, e.g. Maddaus, *How America's Biggest Theater Chains are Exploiting their Janitors*, Variety (Mar. 27, 2019) <https://variety.com/2019/biz/features/movie-theater-janitor-exploitation-1203170717/> [as of Aug. 6, 2020]; see also e.g., Mehrotra, *supra*, *In Trump's America, Bosses are Accused of Weaponizing the ICE Crackdown.*

[10] California's job losses are concentrated in industries with low wage weekly earnings, but majority of the essential jobs are low-wage—with farmworkers at the top of the list. (See Mesquita "California Job Losses Are Concentrated in Industries With Low Average Weekly Earnings" California Budge & Policy Center (May 2020) <https://calbudgetcenter.org/resources/job-loss-figures-052120/> [as of Aug. 6, 2020]; Thomason & Bernhardt, Front-line Essential Jobs in California: A Profile of Job and Worker Characteristics, U.C. Berkeley Labor Center (May 14, 2020).) <http://laborcenter.berkeley.edu/front-line-essential-jobs-in-california-a-profile-of-job-and-worker-characteristics/> [as of Aug. 6, 2020].)

These low-wage workers and their employers "do not deal in equal footing." (*Kerr's*, *supra*, 57 Cal.2d at p. 327, internal quotations and citations omitted.)

Section 226.7's self-enforcement not only protects employees' health and safety, but also strikes at the imbalance of bargaining power between employees and employers. Under the scheme created by the IWC and the Legislature with Section 226.7, employees do not have to raise their voice—risking retaliation—to request a meal period because the additional hour pay for a missed meal period both incentivizes employers to provide rest and meal periods, and additionally penalizes them if they fail to do so. Employees do not have to ask for this additional hour of pay when a meal or rest period is not provided, because that hour of pay should be paid immediately and appear on their wage statement. (See *Safeway Inc. v. Superior Court* (2015) 238 Cal.App.4th 1138, 1155, fn. 5 ["[E]mployers owe premium wages in the absence of any request by employees or payment"], citing *Murphy, supra*, 40 Cal.4th at p. 1108.) The Court of Appeal's decision not only removes the intended immediate self-enforcement of Section 226.7, but also removes statutory rights meant to protect employees' employment conditions and safety.

II. Public Policy Dictates that Including Section 226.7 Premium Wages in Section 226's Wage Statements is Necessary to Ensure Compliance with the Law.

A. The Exclusion of Section 226.7's Premium Pay from Section 226 Subverts Section 226's Informational Purpose.

The Court of Appeal also erred by concluding that wage statements required under Section 226 need not include

disclosure of Section 226.7 premium wages. (*Naranjo II*, *supra*, 40 Cal.App.5th at p. 473.) The plain language of the two sections dictates disclosure of these wages. Under Section 226.7 employees must be paid "one additional hour of pay" when they do not receive a rest or meal period and such payment is a "wage to compensate employees." (*Murphy*, *supra*, 40 Cal.4th at pp. 1104–1105.) Under Section 226 employer must provide an "accurate itemized statement" disclosing "gross wages earned" and "net wages earned," when such wages are paid by the employer. (See *Soto v. Motel 6 Operating, L.P.* (2016) 4 Cal.App.5th 385, 392.) A wage statement that does not disclose wages paid to compensate for the need to work without compliant meal or rest periods neither discloses wages earned nor provides an accurate statement of wages paid to the employee.

The policies undergirding Section 226's disclosure requirement also support holding that employers are required to include the payment of Section 226.7 premium wages when paid. As the Court recently recognized in *Ward v. United Airlines, Inc.* (2020) 9 Cal.5th 732, the "core purpose of Section 226 is 'to ensure an employer 'document[s] the basis of the employee compensation payments' to assist the employee in determining whether he or she has been compensated properly." (*Ward*, *supra*, 9 Cal.5th at 752-753, quoting *Soto*, *supra*, 4 Cal.App.5th at p. 390.) To effectuate this policy, the Legislature has repeatedly increased the disclosure obligations required of employers under Section 226 since first enacting the requirement to provide wage statements in 1943. (*Id.* at 314.) Since 1973, the statute has

specifically required that statements disclose to employees both their "gross and net wages." (*Id.*)

The *Naranjo* Court's conclusion—that wage statements need not disclose the payment of a meal period— subverts the policy result intended by the Legislature. If an employee is "entitled to the additional hour of pay immediately upon being forced to miss a rest or meal period"—as with other premium wages such as overtime, *Murphy*, *supra*, 40 Cal.4th at p. 1108, but employers are not required to disclose such wage payments to workers when paid, employees would receive inaccurate wage statements. These statements would neither accurately reflect the amount of gross wages nor the amount of net wages. Far from being a tool "to assist [an] employee in determining whether he or she has been compensated properly," *Ward*, *supra*, 9 Cal.5th at 752-753, such inaccurate wage statements would only serve to obfuscate.

The Court of Appeal's decision to exclude Section 226.7 premium wages from Section 226 also raises the following questions: 1) where should employers reflect the payment of these wages and 2) how often should employers pay these premium wages?[11] Is an employer obligated to pay this premium the following day each time employees do not receive a rest or meal period and provide employees with a document identifying the payment of this wage? After all, under *Murphy*, these wages

[11] Under the Court of Appeal's decision Section 226.7 premium pay is not a "wage" and since Section 204 requires the periodic payment of "wages," Section 204 (presumptively) would not apply either.

are due immediately. (*Murphy*, *supra*, 40 Cal.4th at p. 1108.) If the employer does pay, presumably this is taxable income and presumably reflected on the employee's W-2. If it is not wages does the employer provide a separate payment and document identifying the 226.7 premium wages on the employee's regular pay period to ensure that reported income on the W-2 form is consistent with the income statements given to the employee? Under both options an employer would be providing separate multiple wage statements to the employee. This, however, undermines the very purpose of Section 226. Section 226's "informational purpose would be ill-served by a rule that led to employees receiving a blizzard of wage-statements…and from this paper snowdrift [try] to discern what they had actually been paid." (*Oman v. Delta Air Lines, Inc.* (2020) 9 Cal.5th 762, 775.)

Or, does the *Naranjo* court suggest that no written statement need be provided to the employee reflecting payments under 226.7? This would certainly be at odds with the express purpose of that provision which "is to insure that employees are adequately informed of compensation received and not shortchanged by their employer." (See Analysis submitted to the Assembly Committee on Labor Relations, regarding AB 3731 (As Amended May 12, 1976).)[12] It is telling that in this analysis, the word "compensation" not wages is used to describe the expected reporting. This is true in various analyses, which use "wages" and "compensation" interchangeably.[13] Thus, public policy

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[12] May 18, 1976 Report, Naranjo MFJN at 0227.

[13]See Assembly Third Reading Report, May 28, 1976, Naranjo

dictates that employers should provide employees wage statements reflecting all wages earned, including Section 226.7 premium wages.

B. Section 226(e)(1) Serves to Both Ensure Wage Statements Properly Inform Employees About their Compensation and As Proof of Income.

Spectrum incorrectly attempts to limit the purpose of Section 226(e) penalty to protecting employees' ability to provide proof of income. (See ABM at p. 37.) Spectrum uses the letter submitted by California Rural Legal Assistance ("CRLA") to support this argument. (*Ibid*.) However, as the section quoted by Spectrum shows CRLA by sponsoring this bill sought for employees to be informed about their earnings and deductions, which in turn helps farmworkers provide proof of income. (Sept. 2, 1976 letter, Naranjo MFJN 0243-0244). Moreover, other letters and documents, which are part of the legislative history, show that Section 226(e) sought to ensure that employees are adequately informed of "compensation received" and to facilitate proof of income. (See May 18, 1976 Hearing, Naranjo MFJN 0227-0228; Sept. 1, 1976 Letter from California Teamsters Public Affairs Council, Naranjo MFJN at 0245.) Spectrum is correct that "... when the section 226 penalty was enacted in 1976, the Legislature was concerned with (1) employees being able to confirm they were properly paid and (2) employees suffering damages from not being able to document their pay so they could

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MJFN at 0229; September 1, 1976 letter in support from California Teamsters Public Affairs Council, Naranjo MJFN at 0245.

obtain the benefits of social programs." (ABM at p. 38.) But Spectrum's argument ignores the fact that payments of compensation for a missed meal or rest period must be calculated to determine whether an employee has been properly paid, or has been "shortchanged" by his employer. Those analyses also make clear that the Legislature was concerned both with the "lack of wage information or improper information." (Naranjo MJFN at 0229.)

The failure to include Section 226.7 premium pay in wage statements strikes at both of these purposes. First, as discussed above, Section 226.7 premium pay should be included as wages earned in the employee pay stubs. The lack of this information means that the wages listed in the paystub are incorrect when an employee works through their rest or meal period. Moreover, given that the additional hour of pay under Section 226.7 does not count as hours worked, an employee cannot simply cross-reference the total hours listed in her pay stub with her gross wages to determine if she received payment for all her wages earned. (See June 30, 2020 Public Hearing before the Industrial Welfare Commission, MFJN at 0480.) On the other hand, if an employer compensates an employee for missed rest or meal periods, but does not include a separate entry for this payment, the cross reference between hours and wages earned does not provide a linear answer. Employees would not be able to determine if they are being shortchanged. Second, the failure to include all wages earned, which includes Section 226.7 premium wages, means employers are not providing an accurate proof of

income due to the employer's failure to include all wages earned.

Finally, the Legislature decides which violations of the Labor Code warrant penalties. The Legislature decided, here, that the failure to provide accurate wage statements warrants a penalty regardless of whether different penalties arise for the same conduct. The failure of employers to 1) even provide statements and 2) include all appropriate information was the driving force to include Section 226(e). (See Sept. 2, 1976 Letter, Naranjo MFFN at 0246.) Assembly Member Bill Lockyer urged then Governor Brown to sign Bill 3731, which provided for this penalty, because he "was surprised to learn that some employers consistently failed to provide such information to their workers." Section 226(e) provides that employers who make "isolated and unintentional payroll error(s)" would not be penalized. The Legislature decided that this isolated inadvertent conduct is the only conduct exempt from Section 226(e) penalties.[14]

C. Accurate Wage Statements that Include Section 226.7 Premium Wages Are Crucial to Low-Wage Workers.

Accurate wage statements are particularly important to the low-wage workers that Amici represent. Low-wage workers experience wage theft at higher rates than other workers, see Cooper & Kroeger, *Employers steal billions form workers' paychecks each year*, Econ. Pol. Inst. (2017), and are often the least well equipped to remedy such theft. Low-wage workers

[14] Spectrum's complaint that the Labor Code provides for "piggy-backing" penalties should be directed to the Legislature. (See ABM, at pp. 32-33.)

disproportionately lack post-secondary education or a high-school degree that would allow them to detect unpaid wages absent full disclosure by an employer. (See Low-Wage Work in California Data Explorer, U.C. Berkeley Labor Center (2017) <http://laborcenter.berkeley.edu/low-wage-work-in-california> [as of Aug. 6, 2020].) Because these workers are disproportionately foreign-born, see *id.*, and have frequently only moved to the United States recently, they regularly do not know they are entitled to compensation for rest- and meal-break violations until such pay is disclosed. As a practice, *amicus curiae* Legal Aid at Work requests such evidence from employers when assisting workers during the *Berman* hearing process.

In addition, employers regularly make deductions for an employee's gross wages, making it difficult to understand whether the amount an employee actually receives in net wages translates to wages that are agreed upon and lawful. When low-wage workers attempt to vindicate their rights via the informal *Berman* hearing process, which lacks meaningful discovery, wage statements are often the core evidence.

III. Sections 201-203 "Wages" Include Section 226.7 Premium Pay.

A. Section 226.7's Premium Pay Falls Within Sections 201-202 and Sections 201-203's Statutory Language Supports Including Section 226.7 Premiums.

Spectrum argues that in order for Section 226.7 premium wages to be included under Section 203, the Legislature should have specifically listed Section 226.7. (ABM at p. 27) Spectrum's position, if adopted, would also undermine the legislative

objectives underlying Sections 201-203 to protect workers. "The prompt payment provisions of the Labor Code impose certain timing requirements on the payment of final wages to employees who are discharged ([§ 201]) and to those who quit their employment (§ 202)." (*McLean v. State of California* (2016) 1 Cal.5th 615, 619.) These three Sections work hand in hand: "[t]ogether, sections 201 and 202 direct employers to promptly pay wages when employment is terminated by discharge, or by resignation if no requisite written contract exists, with section 203 providing for penalties when the employer willfully fails to do so." (*Smith v. Superior Court* (2006) 39 Cal.4th 77, 85.)

As discussed above, Section 226.7's premium pay are wages and compensate employees for unpaid labor, and, as such, this premium pay is included under Sections 201 and 202. Sections 201(a), 202(a), and 203(a) use the term "wages" without qualification. In contrast, subsection (b) of Sections 201 and 202 and Sections 201.5 and 201.7 provide for specific carve outs and treatment of vested vacation and paid leave, for example. But nothing in this Chapter provides for a different treatment for final pay of premiums under Section 226.7. In interpreting Labor Code provisions, "the text [is] the best indicator of legislative purpose," and these three Sections must be liberally construed in favor of protecting employees. (*McLean*, *supra*, 1 Cal.5th at p. 622.)

For instance, this Court, mindful of California's strong policy on prompt payment, has construed Sections 201-203 to cover broad categories of workers. Most recently, in *McLean*, this

Court granted review to decide, among other issues, whether an employee that retired is interchangeable with one that "quit" for the purposes of Section 202. After finding support in the statutory language for treating a retiree the same as an employee that quit, the Court also looked to "statutory policy favoring prompt payment of wages," which it found to "appl[y] to employees who retire, as well as those who quit for other reasons." (*McLean*, *supra*, 1 Cal.5th at p. 626.) As this Court determined, "nothing in the language of sections 202 and 203 or in their legislative history that suggests the Legislature believed retirees to have less need of prompt wage payment than those who quit to pursue other employment opportunities." (*Id*. at p. 627.) Consequently, this Court cast the protective net widely, to ensure that retirees as well as those who "quit" one job for another have the benefit of Sections 201-203.

In *Smith*, this Court grappled with Section 201's definition of "discharged," specifically, whether that term can embrace employees hired for a particular job assignment that has terminated or time duration that ended, or whether it can mean only employees who were fired or laid off. (*Smith*, *supra*, 39 Cal.4th at pp. 82–83.) *Smith* concluded that, "based on statutory scheme as a whole, as well as the relevant legislative history, evince the Legislature's intent to require immediate wage payment in both types of discharge situations." (*Id*. at p. 92.) This Court concluded that "[r]eleased employees generally appear no less deserving or less in need of immediate wage payment than those who are fired." Thus, employees working on contracts of

duration or individual assignments were swept within the protective umbrella of Section 201.

As Naranjo counsel argues, this Court should disregard Spectrum's strained reading of Section 203, which asks the Court to conclude, based on the lack of explicit reference to premium pay in Section 203's text, that nonpayment of premium wages would not trigger waiting time penalties. (See RBM at pp. 20-24.) Under such a construction, an employer could fail to pay all overtime compensation due and still avoid Section 203 penalties because the applicable Wage Orders do not use the term wages when mandating the payment of overtime. Rather they prohibit work after a certain number of hours unless"...the employee is compensated for such overtime..." (See, e.g. 8 Cal. Code Regs. § 11040(3)(A)(1).) Section 1194 likewise characterizes overtime wages as "overtime compensation." A construction rendering such an absurd result should be rejected. (*In re. Cregler* (1961) 56 Cal. 2, 308, 312 [statutes should be construed to avoid absurd applications].) Likewise, here, this Court should also hold that Section 226.7 premiums are "wages" under Section 201 and 202, and by default included in Section 203.

B. Section 203's Purpose Would Be Furthered If Waiting Time Penalties Can Be Triggered by the Willful Nonpayment of Section 226.7 Premiums.

Section 203's purpose would also be furthered by this Court's reaffirmance of *Murphy*. "The purpose of the waiting time penalty is 'to compel the immediate payment of earned wages upon a discharge' by attaching a substantial penalty to any delay in cutting the final paycheck." (*Diaz v. Grill Concepts Servs., Inc.*

(2018) 23 Cal.App.5th 859, 875, quoting *Smith*, *supra*, 39 Cal.4th at p. 92.) "Eliminating such delay is 'essential to the public welfare'" (*Ibid.*, citations omitted.) This is because, as this Court has repeatedly stated, "California has long regarded the timely payment of employee wage claims as indispensable to the public welfare." (*Smith*, supra, 39 Cal.4th at p. 82.) This reflects the universal recognition, discussed in more detail above, that "wages are not ordinary debts, that they may be preferred over other claims, and that, because of the economic position of the average worker and, in particular, his dependence on wages for the necessities of life for himself and his family, it is essential to the public welfare that he receive his pay when it is due." (*Ibid.*, quoting *In re Trombley* (1948) 31 Cal.2d 801, 809–810.) Section 203 implements "this fundamental public policy regarding prompt wage payment." (*McLean*, *supra*, 1 Cal.5th at p. 626.)

Section 203's powerful incentives promote prompt payment and punish employers for willful withholding of pay due to their workers. Of course, premium pay for missed breaks is no different from any other type of wage that must be promptly paid upon an employee's discharge or resignation; as *Murphy* explains, "a payment owed pursuant to section 226.7 is akin to an employee's immediate entitlement to payment of wages or for overtime." (*Murphy*, *supra*, 40 Cal.4th at p. 1108.) Thus, for the purposes of furthering the policies of Section 203, whether a worker's wages are derived from overtime work, missed breaks, or straight pay does not matter. Whatever their provenance, they all constitute pay—wages—that a worker depends on for the

"necessities of life." Through Section 203's punitive scheme, California policy exerts financial pain upon an employer that fails to make prompt final payments of *all wages* due.

This Court should not adopt the hair-splitting distinction over the type of "wage" that would be covered by Section 203 compelled by the lower court's decision and urged by Spectrum. Nothing in the text or legislative history of Sections 201-203 supports the notion that the Legislature intended to limit final payment protections to cover only a specific type of wage, let alone exempt premium pay, reporting time pay, or split shift pay entirely from coverage. And there is no principled reason as to why, for the purposes of achieving prompt final payment of wages, dual-purpose wage remedies should be treated different from any other type of wage. Neither the statute's text or its legislative purpose—to ensure prompt payment of wages so that vulnerable low-wage workers would be able to meet the necessities of life—supports exempting dual-purpose wages, which includes Section 226.7 premium pay, from the protections of Section 203.

C. The Willful Failure to Pay Section 226.7 Premium Pay Triggers Section 203 Penalties Regardless of Whether There is a Separate Action for Unpaid Wages.

Even if an action under Section 226.7 is for the failure to provide rest and meal breaks, and not for the nonpayment of wages, an employee can move forward with an action for Section 203 penalties. Section 203 penalties apply regardless of whether the action is accompanied by a claim of unpaid wages. (*Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1398.) An

employee's right to Section 203's waiting time penalty vests under Section 203(a) whenever an employer "willfully fails to pay [ ] any wages of an employee who is discharged or quits." This penalty attaches whether an employer delays one day, thirty days, six months or more in paying all wages due.[15] Even when an employer pays an employee all wages after the employee is discharged or quits—but before the employee commences an action under Section 203—the waiting time penalty does not disappear. An employee can move forward with a claim *only* for the waiting time penalty or for both the waiting time penalty and the unpaid wages. Section 203's penalty does not tether to a separate action for wages.

Finally, Section 203(b) merely informs the timing to file a claim for waiting time penalties. That timing is not tied to "a particular suit by an employee for unpaid final wages," instead, it "tracks the statute of limitations governing actions for unpaid final wages." (*Pineda*, *supra*, 50 Cal.4th at pp. 1396-1397.) Section 203(b)'s general language "ensures that any changes by a future Legislature to the limitations period governing unpaid final wages would automatically change the limitations period governing section 203 penalties without any need to amend the statute." (*Id.* at 1397.) This Court in *Murphy* already decided that the applicable statute of limitations for 226.7 premium wages is the same for other wage claims under the Labor Code. (*Murphy*, *supra*, 40 Cal.4th at p. 1114.)

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[15] Section 203(a) limits the penalty to 30 days of the employees' wages.

IV. A Ten Percent Interest on Prejudgment Wages is Line with the Remedial Purpose of the Labor Code and Incentivizes Employers to Pay Wages Timely.

Courts liberally construe labor laws in favor of worker protection and that liberal construction should also apply to prejudgment interest rates. (See *Alvarado*, *supra*, 4 Cal.5th at p. 562.) Prejudgment interest is part of the remedial worker protection framework as it protects the time value of unpaid wages because of an employer's recalcitrance to pay all wages when due. A ten percent interest properly compensates employees for the lost time value of their wages. *Amici* urges this Court to adopt the same policy as the California Labor Commissioner and award a ten percent interest on pre-judgment wages owed under Section 226.7. In *amicus* Legal Aid at Work's experience, pre-judgment interest on wages, not penalties, is granted by the Labor Commissioner at ten percent per annuum. For example, in a recent Order, Award, or Decision ("ODA") issued by the Labor Commissioner, which converted automatically to a judgment in the local Superior Court when not appealed or paid in full, the Deputy awarded pre-judgment interest for wage violations, including meal period premium wages, at ten percent.

The Labor Commissioner's policy of applying a ten percent interest is appropriate because Section 226.7 premium pay involves unpaid wages. Here, the Court of Appeal found that Section 226.7 should accrue prejudgment interest at seven percent and Spectrum cited the California Constitution, Article XV, section 1, to justify this rate. (*Naranjo II*, *supra*, 40

Cal.App.5th at pp. 475-476; see also ABM at p. 46-47.) However, Article XV, section 1 refers to interest paid on loans or forbearance "any money, goods, or things in action." Section 226.7 premium wages are neither a loan nor a forbearance. This a wage dispute between an employer and worker and such dispute constitutes a breach of contract. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 969, fn. 5.) The remedy under California Civil Code section 3289 for a breach of contract defaults to ten percent. As Section 226.7 "is a premium wage intended to compensate employees," Section 226.7 premium wages must also accrue interest at the same rates as other forms of compensation owed to workers. (*Murphy*, *supra*, 40 Cal.4th at p. 1114; see also *Bell v. Farmer Insurance Exchange* (2016) 135 Cal.App.4th 1138 [finding that the appropriate rate for prejudgment interest for unpaid overtime compensation is 10% per year].)

A ten percent interest rate is also good public policy to incentivize employers to pay wages when due. Section 203's waiting time penalties are capped at 30 days and workers have few tools to incentivize employees to pay wages. Courts have recognized that the delay of payment or loss of wages "results in the deprivation of the necessities of life, suffering inability to meet just obligations to others, and, in many cases may make the [employee] a charge upon the public." (*Kerr's*, *supra*, 57 Cal.2d at 369, internal quotations and citations omitted.) Indeed, *Amici*'s clients have faced credit card late charges and higher interest rates, repossession of materials goods purchased by loans, and even eviction as a result.

Amici's clients also face further delays in receiving their wages after filing in Court or with the Labor Commissioner. The Plaintiff in this case has been waiting since 2007—when Spectrum terminated him—to receive all of his wages. (*Naranjo II*, *supra*, 40 Cal.App.5th at 454.) In the experience of amici Legal Aid at Work in representing workers before the Labor Commissioner, the process from filing a claim to receiving a decision can take years. Given how long claims may take,[16] workers should not be further penalized for their employer's violations of the laws and delays before the Labor Commissioner. An employer should not benefit from having violated basic wage protections while vulnerable workers, such as low-wage immigrants, face though decisions and financial harm.

V. The Compensation, Penalties and Interest Payments Established by the Legislature Serve Unique Deterrent Purpose and Are Improperly Characterized as "Stacking" By Spectrum.

Spectrum argues that an award of both Sections 203 and 226 penalties would be an improper stacking of penalties. (See, e.g., ABM at pp. 40-43.) However, this ignores the fact that each form of recovery addresses a discrete violation by the employer, any one of which could have been avoided by compliance with the discrete requirements set out in these statutory provisions. First, Spectrum could have avoided liability for Section 226.7 wages by

[16] As an example of the delay that workers are facing, a recent ODA issued to amicus Legal Aid at Work in 2020, for a wage claim filed in 2016, for wages earned, including meal period premium wages, between 2013 and 2016 – seven years after not being provided meals periods.

simply providing meal and rest periods, or by having a valid written agreement on on-duty meal periods. Having failed to do either, Spectrum could have avoided Section 203 penalties by paying the compensation due the workers as a result of those denied meal and rest periods. Having paid those amounts Spectrum could have complied with Section 226 by reporting the amount of compensation paid for those meal or rest period violations. Each of these provisions is designed to incentivize compliance with an independent obligation. First, Section 226.7 serves the dual purpose of requiring a compliant rest or meal period and compensating a worker for the fact that she was denied time off to which she was entitled. Second, Section 203 makes sure the employers who violate the law, face an economic disincentive for failing to pay wages owed–including Section 226.7 wages. Finally, Section 226 insures that workers know the amount of and what they are being paid for, and that employers have an economic disincentive for failing to provide them with complete and accurate information regarding their pay. Each is an important requirement designed to protect workers.

These are requirements that reflect the same kind of police powers that the State exercises when imposing limits on driving a motor vehicle. When a motorist speeds through a red light while driving a vehicle with expired license plates, it is not "stacking" to issue a citation that includes a fine for speeding, a fine for running the red light, and a fine for driving an unregistered vehicle. Like the motorist, Spectrum had the responsibility to comply with each of these provisions, and suffer

the consequences if it fails to do so.

CONCLUSION

Based on the foregoing, amici respectfully request that this Court reverse the decision of the Court of Appeal. Section 226.7 premium wages compensates employees for unpaid labor and this compensation should not be treated any differently from other employee compensation provided for in the Labor Code and Wage Orders. The lower court's construction of Section 226.7 premium pay defeats Section 226.7's dual purpose to provide a self-enforced remedy and compensate employees. Finally, the *Naranjo* decision rolls back over a century of protections created for employee compensation.

Dated: August 10, 2020

Respectfully submitted,

CALIFORNIA RURAL LEGAL ASSISTANCE FOUNDATION

/s/ Verónica Meléndez
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CERTIFICATE OF WORD COUNT

Counsel of record hereby certifies that, pursuant to the California Rules of Court, Rule 8.504(d)(1) and 8.490, the enclosed Proposed Amicus Brief, not including the Application for Leave to File Brief of Amici Curiae, was produced using 13-point Century Schoolbook type style and contains 8,038 words. In arriving at that number, counsel has used Microsoft Word's "Word Count" function.

Dated: August 10, 2020

Respectfully submitted,

Capstone Law APC

By: /s/ Ryan H. Wu
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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

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Executed on August 10, 2020, at Los Angeles, California.

Maria Olmos	***/ S / Maria Olmos***
Type or Print Name	Signature

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STATE OF CALIFORNIA
Supreme Court of California

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Case Number: **S258966**
Lower Court Case Number: **B256232**

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Date

/s/Maria Olmos

Signature

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