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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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CERTIFICATION FROM  
THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF WASHINGTON

ANA LOPEZ DEMETRIO and FRANCISCO EUGENIO PAZ,  
individually and on behalf of all others similarly situated,

Petitioners/Plaintiffs,

v.

SAKUMA BROTHERS FARMS, INC.,

Respondent/Defendant.

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AMICUS BRIEF

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## I. INTRODUCTION

Washington law requires that all workers receive payment of wages due, receive at least minimum wage, and work under healthy and safe conditions. RCW 49.12.010; *Schilling v. Radio Holdings, Inc.*, 136 Wn.2d 152, 157, 961 P.2d 371 (1998). Washington's Industrial Welfare Act ("IWA"), RCW 49.12 et seq., and Minimum Wage Act ("MWA"), RCW 49.46 et seq., and corresponding regulations set forth these wage and work conditions, including a requirement that employers permit workers to take periodic rest breaks. WAC 296-126-092 and 296-131-020. Rest breaks are considered paid "hours worked." *Wash. St. Nurses Ass'n v. Sacred Heart Med. Ctr.*, 175 Wn.2d 822, 831, 287 P.3d 516 (2012). Rest breaks for agricultural piece rate workers are included as hours worked in weekly wage calculations for the purposes of ensuring those workers receive at least minimum wage for their efforts. WAC 296-131-020(2).

Petitioners argue that, because piece rate compensation is based upon production and a rest break is non-piece producing, farm workers are not being paid for their rest breaks and are therefore owed separate and additional pay for rest breaks. Pet'r Brief at 3. This argument does not comport with Washington law or the realities of the piece rate compensation system. What Petitioners fail to recognize is that employers are already paying piece rate workers for their rest breaks at the rate of *at*

*least* minimum wage because these breaks are included as “hours worked” for the purposes of weekly minimum wage calculations. If a piece rate worker makes more than minimum wage, then they are getting paid even more for their rest breaks. Petitioners’ proposed rule goes a step beyond the statutory requirement by suggesting workers are entitled to separate and additional pay for their rest breaks. Furthermore, retroactively requiring additional pay for rest breaks would do nothing to encourage workers to take periodic rest breaks during the work day, which is the very purpose of the regulatory framework.

Nearly twenty-five years ago the Legislature directed the Washington State Department of Labor and Industries (“DLI”) to study the issue of rest breaks for farm workers. DLI carefully considered the arguments of farmers and farm worker advocates before adopting a reasonable regulation. DLI rejected the argument that workers should be paid separately for rest breaks. Resp’t Brief at 9. Instead, rest breaks were expressly included in piece rate pay. *Id.*, WAC 296-131-020(2).

Farm worker advocates are now asking this Court to re-write the regulation to *exclude* rather than *include* rest breaks when calculating piece rate pay for workers. The immediate result would be a flurry of class actions seeking millions of dollars of back wages and attorneys’ fees and devastation for small to mid-sized farm operations. Amici Washington Farm Labor Association, the Washington State Tree Fruit

Association, and the Washington Growers League urge the Court to reject Petitioners' invitation to change the law.

## II. BACKGROUND

Piece rates are a common method of payment for farm workers who use hand labor to tend or harvest crops. A piece rate is the amount of money paid for one unit. The unit in agriculture varies by the crop and the task being performed. For example, in an apple orchard, a worker could be paid per bin for harvest, per row for thinning or tying, or per tree for planting. With the advent of the Washington minimum wage, piece rate compensation became tethered to an hourly minimum wage guarantee. WAC 296-126-021. If a worker's piece rate earnings fall short of the hourly minimum wage, the employer pays the worker the difference. The minimum wage, therefore, reflects a guaranteed wage for all hours worked by piece-rate workers, *including* periodic rest breaks. Any additional compensation under piece rate pay is a *bonus* for productive work.

Both farmers and farm workers benefit under a piece rate system as compared to a straight hourly rate of pay. For farmers, piece rates establish the unit labor cost for a particular task, thus enabling a more accurate prediction of the labor cost of production. For farm workers, the system guarantees a minimum wage for all hours worked but provides additional rewards for more productive workers.

Piece rate systems do not require close and constant supervision of a worker's productivity, a benefit to workers and farmers. In the current atmosphere of intense agricultural labor shortages piece rates result in a dynamic and open market. Employers must offer piece rates that are high enough to attract laborers from their competitors. Workers are free to "vote with their feet" by leaving for higher earning opportunities, and will take into consideration ease of harvest conditions and many other factors. Lornet Turnbull, *Washington apple growers scrambling to find workers*, Seattle Times, Oct. 30, 2011, available at: <http://tinyurl.com/lhqmxs4>.

Washington employs more than a quarter of a million farm workers, more than any other state except California. U.S. Dep't of Agriculture, Nat'l Agricultural Statistical Serv., *2012 Census of Agriculture*, available at: <http://tinyurl.com/kszh4wl> (page last modified Jan. 22, 2015). Washington also pays some of the highest agricultural wages in the United States. U.S. Dep't of Labor, Employment and Training Admin., *Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: 2015 Adverse Effect Wage Rates*, 79 Fed. Reg. 75839 (Dec. 19, 2014), available at: <http://tinyurl.com/l2wuq34>. The Adverse Effect Wage Rate (AEWR)<sup>1</sup>, which is based upon USDA wage data, for Washington rose to \$12.42 an

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<sup>1</sup>The AEWR is the annual weighted average hourly wage for field and livestock workers (combined) published annually by the U.S. Department of Agriculture based on a quarterly wage survey. 20 C.F.R. § 655.103(b).

hour in 2015, the fourth highest AEW in the United States<sup>2</sup>. Although the AEW applies only to employers using the H2-A guest worker program<sup>3</sup>, it is based upon actual wages paid in the state. Skilled piece rate workers make significantly more than the AEW, often more than \$20 an hour. Wash. State Employment Security Dep't, 2013 Survey of Washington Fruit Growers, available at: <http://tinyurl.com/q89cm27> (May 27, 2014). Less productive workers are still guaranteed at least minimum wage, \$9.47 an hour, the highest minimum wage in the United States. National Conference of State Legislatures, State Minimum Wages, available at: <http://tinyurl.com/kxsuowu> (updated Dec. 18, 2014).

Washington farmers grow high value, labor intensive crops that have some of the highest labor costs in the United States. While farmers in the United States on average devote approximately 9 percent of their total farm expenses to labor, Washington farmers report average labor expenses of about 22 percent. Kristi Pihl, *State's farm labor costs increase 36% in a year*, Tri-Cities Herald, Aug. 26, 2013, available at: <http://tinyurl.com/nxeqbjp>. For crops that rely on hand labor, labor costs

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<sup>2</sup> Oregon and Washington share the fourth highest AEW at \$12.42. The top five labor states for seasonal workers are California, Washington, Florida, Texas, and Michigan. *Labor Certification Process*, 79 Fed. Reg. 75839. Washington's AEW of \$12.42 per hour includes agriculture jobs in the survey which were paid at the 2014 minimum wage of \$9.32 per hour as well as piece rate harvest jobs, which tend to average a much higher hourly rate.

<sup>3</sup> Washington farms employed 9,077 guest workers under the H2-A program in 2014. USDOL, Office of Foreign Labor Certification, *H-2A Temporary Agricultural Labor Certification Program - Selected Statistics*, FY 2014, available at: <http://tinyurl.com/pav67w5> (last visited Jan. 30, 2014).

make up approximately 40 percent of all variable costs. Karina Gallardo, *Fruit Growers, and the U.S., Would Suffer*, New York Times, Aug. 18, 2011, available at: <http://tinyurl.com/nkptj9p>. High quality produce requires a skilled and human touch. Linda Calvin & Phillip Martin, *The U.S. Produce Industry and Labor* 18 (USDA, Econ. Research Report No. 106, 2010), available at: <http://tinyurl.com/ogo8jrx>. Indeed, Washington farms have thrived nationally and globally, despite high costs. Nationally, Washington is number one in the harvest of: apples, sweet cherries and pears, all of which are traditionally hand-picked at piece rate wages. Wash. State Dep't of Agriculture, Export Statistics, available at: <http://tinyurl.com/lmfg3re> (last visited Jan. 28, 2015). Washington is the third largest exporter of food and agriculture products in the U.S. *Id.*

Washington's agricultural employers recognize that their success is based in large part upon the hard work of the skilled workers who tend and harvest their crops. And the clear record is that the workers and employers alike have benefitted from a system that guarantees a set wage, but that also recognizes and rewards hard work with a compensation system where a worker can earn far more than the minimum.

### **III. CERTIFIED QUESTIONS**

- (1) Does a Washington agricultural employer have an obligation under WAC 296-131-020(2) and/or the Washington Minimum Wage Act to separately pay piece-rate workers for the rest breaks to which they are entitled?; and

- (2) If the answer is ‘yes,’ how must Washington agricultural employers calculate the rate of pay for the rest break time to which piece-rate workers are entitled?

#### IV. ARGUMENT

##### A. Summary of Argument

Although piece rate compensation is based upon production, all work, both productive (piece producing) and non-productive work (non-piece producing) is included in the piece rate pay. DLI recognized the nature of piece work pay when it enacted WAC 296-131-020(2) which includes rest breaks as time worked. Interpretive guidance confirms that piece worker’s paid rest breaks are included in the piece rate pay. Petitioners are asking the Court to rewrite WAC 296-131-020(2), and require a separate and additional payment for rest breaks. They advocate a change that may be retroactively applied to farmers throughout the state. See *McDevitt v. Harbor View Med. Center*, 179 Wn.2d 59, 75, 316 P.3d 469 (2013). Amici urge the Court not adopt this radical proposal which could have a devastating impact on farmers throughout the state.

##### **1. Piece rate compensation practices do not interfere with rest breaks.**

Petitioners assert that failure to provide separate and additional compensation for piece rate workers’ rest breaks would exclude farm workers “from important health and safety protections” and “discourage workers from taking necessary breaks.” Pet’r Brief at 1. This is baseless rhetoric. There is no dispute that Sakuma workers received rest breaks.

Missed rest breaks are not at issue here. There is no evidence that the current piece rate practices result in workers not receiving their rest breaks or that workers are somehow discouraged from taking breaks.

Current piece rate practices provide incentive for workers to take periodic rest breaks and consequences if breaks are denied.<sup>4</sup> Petitioners assert that without separate and additional compensation workers will forgo breaks in favor of increased production. However, working through rest breaks does not increase productivity. Studies have shown that periodic breaks reduce fatigue and result in overall **increased** productivity. See 29 C.F.R. § 785.18; Joe Robinson, *The Secret to Increased Productivity: Taking Time Off*, Entrepreneur, October 2014, available at: <http://www.entrepreneur.com/article/237446>. One of the primary reasons that short rest breaks are on “employer’s time” is the recognition that rest breaks, in addition to protecting the health and safety of the worker, actually benefit the employer. See 29 C.F.R. § 785.18; *Mitchell v. Greinetz*, 235 F.2d 621, 624, 61 A.L.R.2d 956 (10th Cir. 1956) (mandatory rest periods increased production and benefitted employer). Under a piece rate system, both the employer and the worker share the benefits of increased productivity. Neither workers’ health and safety nor

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<sup>4</sup> A missed rest break has consequences other than reduced productivity. It is also “conditions of labor violation” under RCW 49.12 et seq. *Wingert v. Yellow Freight Sys., Inc.*, 146 Wn.2d 841, 849-50, 50 P.3d 256 (2002).

their right to a rest break is in any way threatened by current piece rate compensation practices.

**B. Piece rate pay already compensates workers for rest breaks.**

Petitioners' entire case is based upon an assumption that rest breaks are not "paid" because a worker is not producing (picking, tying, planting, etc.) during that ten minute period. This assumption is based on the fact that piecework employees are paid a fixed rate for each unit produced or task performed but ignores the fact that, although a piece rate is measured by production, both productive (piece-producing) and non-productive (non-piece producing) time is spent producing each piece.

For example, in 2011, a worker picking Fuji apples earned a median wage of \$25 per bin. 2013 Survey of Washington Fruit Growers, available at: <http://tinyurl.com/q89cm27>. In order to earn \$25 per bin picking apples, the worker must check in, receive instructions regarding work (including safety instructions and information on employer policies), gather equipment, and travel from tree to bin (up and down a ladder), tree to tree and row to row in order to pick apples. Petitioners maintain that if the worker is not picking, she is not earning. Pet'r Brief at 3. However, as little as 30% of an apple picker's time is spent picking apples. *U.S. Produce Industry and Labor*, available at: <http://tinyurl.com/ogo8jrx>. These activities are called "non-productive" activities only because they are not piece producing, but each is nonetheless essential to production.

All time worked, productive and non-productive, including rest breaks, is compensated through piece-rate pay.

When drafting WAC 296-131-020, DLI assumed that piece rate pay already included rest breaks. Resp't Brief at 16. WAC 296-131-020(2) reflects DLI's understanding of the realities of piece work:

(2) Every employee shall be allowed a rest period of at least ten minutes, on the employer's time, in each four-hour period of employment. **For purposes of computing the minimum wage on a piecework basis, the time allotted an employee for rest periods shall be included in the number of hours for which the minimum wage must be paid.**

WAC 296-131-020(2) (emphasis added).

In interpreting agency regulations and guidance, the Court gives regulations their ordinary meaning. *Hubbard v. State*, 86 Wn. App. 119, 126, 936 P.2d 27 (1997). "Plain words do not require construction." *Berger v. Sonneland*, 144 Wn.2d 91, 105, 26 P.3d 257 (2001). The plain language of the regulation requires employers to pay piecework employees minimum wage for all time at work, regardless of whether that time is productive or nonproductive. Rest periods are just one type of the many kinds of non-productive time included in piece rate pay. Petitioners' premise that if the worker is not picking (or otherwise "piece producing") she is not getting paid, and therefore is due separate and additional compensation, is contrary to the plain language of the regulation. Under

current piece work compensation practices workers are paid for their rest periods.

**1. The MWA does not require additional payment for piece rate workers' rest breaks.**

The MWA sets minimum wage requirements for non-exempt Washington workers. WAC 296-128-010(7), promulgated under the MWA, requires that employers calculate employee earnings *either* daily or weekly. The IWA includes a requirement that non-exempt workers receive minimum wages as set forth in the MWA. Regulations under IWA (i.e., WAC 296-126 et seq. and 296-131 et seq.) and corresponding DLI guidance ensure that the MWA requirements are met and, therefore, must be read in conjunction with the MWA.

Washington employers may pay employees at a piece rate instead of on an hourly basis. WAC 296-126-021 states the rule for piece work minimum wage calculations for non-agricultural workers:

Where employees are paid on a commission or piecework basis, wholly or partially,

- (1) The amount earned on such basis in each work-week period may be credited as a part of the total wage for that period; and
- (2) The total wages paid for such period shall be computed on the hours worked in that period resulting in no less than the applicable minimum wage rate.

There is no agricultural employment standard equivalent to this regulation.

Substantial weight is given to an agency's interpretation of the statutes it administers that are within the agency's specialized expertise. *See Westberry v. Interstate Distrib. Co.*, 164 Wn. App. 196, 207, 263 P.3d 1251 (2011); *White v. Salvation Army*, 118 Wn. App. 272, 75 P.3d 990 (2003). DLI provided additional guidance for employers paying wages on a piece rate basis to calculate minimum wage, “. . . The total wage for that period is determined by dividing the total earnings by the total hours worked; the result must be at least the applicable minimum wage for each hour worked. *See* WAC 296-126-021.” Wash. State Dep't of Labor & Indus. Employment Standard ES.A.3. *See also* Employment Standard C.3. DLI's guidance in calculating piece rate pay for agricultural workers for the purposes of minimum wage calculations is identical. *See* Employment Standard D.2; Wash. State Dep't of Labor & Indus., *Agricultural workers: When paid by piece rate, are you earning minimum wage?*, Pub'n F700-171-000 [Jan. 2014], available at <http://www.lni.wa.gov/IPUB/700-171-000.pdf>. “‘Hours worked’ [means] all hours during which the employee is authorized or required by the employer to be on duty on the employer's premises or at a prescribed work place.” WAC 296-126-002(8). “Hours worked” includes rest breaks. *Sacred Heart*, 175 Wn.2d at 829. *See also* Employment Standard C.2 Hours Worked.

DLI clearly intended that employers include piece rate workers' pay for rest breaks as a part of the weekly minimum wage calculations in order to satisfy the requirement that the break be "on the employer's time." Therefore, employers need only include rest breaks as "hours worked" when making minimum wage calculations for piece rate workers and do not need to include separate and additional pay for piece rate workers' rest breaks to satisfy MWA requirements.

**2. Federal minimum wage laws and regulations regarding piece rate work are persuasive.**

As stated above, Washington law requires rest breaks to be allowed on the employers' time and be included in "hours worked" for minimum wage calculations. WAC 296-126-002(8), 296-126-021, 296-126-092(4). Under federal law, rest periods are also "hours worked." 29 C.F.R. § 785.18. Because the MWA is based upon the Federal Fair Labor Standards Act of 1938 ("FLSA"), 29 U.S.C. § 201 et seq., federal cases and interpretations are persuasive authority when construing provisions of the MWA. *Inmiss v. Tandy Corp.*, 141 Wn.2d 517, 525, 7 P.3d 807 (2000).

Federal regulations allow for workers and employers to agree that the pay earned at piece rates "is intended to compensate them for all hours worked, the productive as well as the nonproductive hours." 29 C.F.R. § 778.318(c). Identical to how minimum wages are calculated under WAC 296-131-020 (DLI Admin. Policy ES.A.8.2), the "sum is then

divided by the number of hours worked in the week for which such compensation was paid, to yield the pieceworker's "regular rate" for that week." 29 C.F.R. § 778.111.

More illustrative is the application of these regulations to a vulnerable class of employees: disabled workers. Disabled workers receive a special minimum wage, but the U.S. Dept. of Labor ("USDOL") has set forth rules and guidance to protect these workers from abuses. *See* U.S. Dep't of Labor Wage & Hour Division, Fact Sheet #39C, July 2008 revision, available at: <http://tinyurl.com/lruy3jh>). Fact Sheet #39C notes that rest breaks "are considered to be working time." *Id.* It then distinguishes between compensation for workers paid under an hourly wage versus piece rate compensation. Employers must compensate hourly paid workers for breaks at their normal hourly wage, but no additional compensation is due disabled workers paid piece rates if the piece rate was properly established, because such piece rates include time for personal time and rest. Disabled workers receiving piece rate compensation are not owed separate and additional compensation for rest breaks because rest break compensation is included in the piece rate.

Thus, under both federal law and Washington law, piece rate workers and hourly workers are paid differently, but not treated differently. Piece rate workers and hourly workers are compensated for rest periods, only the method of compensation is different.

**3. Washington case law does not require separate and additional payment for piece rate workers' rest breaks.**

Washington employees may negotiate a manner of payment other than hourly pay so long as the requirements of break time and minimum wages are met. Washington law recognizes that parties to an employment contract can negotiate a wage payment system that includes break periods without requiring separate payment for those breaks. Citing to federal law as persuasive authority, this Court, in *Weeks v. Chief of Wash. State Patrol*, 96 Wn.2d 893, 901, 639 P.2d 732, 736 (1982) held that lunch breaks during which Washington State Patrol officers were on call was work that required compensation, but because that time was contemplated by the parties and compensated for by the salaries paid, the officers were not entitled to *additional* compensation for those breaks. This affirms that paid breaks such as, in this case, rest periods, may be included in a total salary pursuant to a valid employment agreement. Under such circumstances, the employee is not entitled to separate and additional compensation for those breaks.

Just as salaried work exists outside of the hourly wage system, piece rate compensation exists outside of the hourly wage system, but still ensures the worker gets paid the minimum hourly wage. In that respect, piece rate compensation is similar to a variable salary that is based on production. Just as non-exempt salaried employees receive rest breaks and their salary includes payment for those breaks, piece rate workers are

also expected to take mandated breaks that are already included in the piece rate pay. Piece rate work includes all nonproductive time, including rest breaks. This is an agreement that the employee and employer reach prior to the commencement of that work. Workers are not waiving the rest break requirement, but simply agreeing that the piece rate pay includes payment for rest periods. Petitioners' proposed ruling is akin to requiring employers to pay non-exempt salaried employees additional compensation for rest breaks. This does not comport with Washington law.

**C. The Court's decision should apply only prospectively.**

“Judicial decisions may have retroactive or prospective application.” *Lunsford v. Saberhagen Holdings, Inc.*, 166 Wn.2d 264, 270, 208 P.3d 1092 (2009). A retroactive decision applies to all cases arising prior to and subsequent to the announcement of a new rule. *Id.*, at 270. The decision to apply a new rule prospectively is made now, when the Court “is engaged in weighing the relative harms of affirming or overruling precedent.” *Id.* at 279. In this regard, Amici are uniquely situated. Petitioners and Sakuma entered into a settlement agreement that the issue for certification was “whether, going forward, Sakuma Brothers must separately pay their piece-rate works for rest breaks . . .” Dkt. 27. While Sakuma is limited to prospective application, the decision of this Court may be retroactively applied to every other farmer paying workers a piece rate. Retroactive application is “overwhelmingly the norm.”

*Lunsford*, 166 Wn.2d at 270. However, the Court may give its decisions prospective-only application to avoid substantially inequitable results. *McDevitt v. Harbor View Med. Center*, 179 Wn.2d 59, 75, 316 P.3d 469 (2013).

The Court applies the *Chevron Oil Co. v. Huson*, 404 U.S. 97, 92 S.Ct. 349, 30 L. Ed. 2d 296 (1971) test to determine whether a new decision should receive prospective-only application. *Lunsford*, 166 Wn.2d at 272-73. If three conditions are met, the Court may depart from the presumption of retroactivity: “(1) the decision established a new rule of law that either overruled clear precedent upon which the parties relied or was not clearly foreshadowed, (2) retroactive application would tend to impede the policy objectives of the new rule, and (3) retroactive application would produce a substantially inequitable result.” *Id.* (footnote omitted).

The first condition of *Chevron Oil* is met. The entire agriculture industry relied on interpretations of the MWA, IWA, and DLI’s corresponding regulations, publications, and guidance to calculate piece rate compensation without a separate payment for break times. (See above at 9-12.) The second and third prong of the *Chevron Oil* test are also satisfied because, if the Court finds that piece rate workers are entitled additional and separate pay for their rest breaks, and decides that it will be retroactively applied, the result will be devastating to farmers paying piece

rate in Washington State. If the piece rate pay does not already compensate workers for non-productive time such as rest breaks, then failure to pay would be a wage and hour violation subject to a three year statute of limitation. *Bennett v. Computer Task Group, Inc.*, 112 Wn. App. 102, 105, 47 P.3d 594 (2002); RCW 4.16.080. Assuming that the rest break was compensated at minimum wage, every worker paid a piece rate for the past three years would arguably have a claim for \$1.51- \$1.55<sup>5</sup> for each rest break. It does not sound like much, but it adds up quickly.

Amici does not have piece rate worker data for the entire agriculture industry, but we can extrapolate the impact on one group, apple farmers, during a discrete period, harvest, with known data. More than one half of Washington's farms are small farms; average farm size is 396 acres. *2012 Census of Agriculture*, available at: <http://tinyurl.com/kszh4wl>. For apple farmers, each acre of apples will conservatively yield 50 bins. Nicholas Geranios, *Washington apple crop tops \$2 billion*, The Columbian, Nov. 11, 2013, available at: <http://tinyurl.com/ncm456e>. A 400 acre farm would harvest approximately 20,000 bins. Experienced workers can harvest 10 bins a day, but a less experienced worker might average 5 bins a day. *Washington apple growers scrambling*, available at: <http://tinyurl.com/lhqmxs4>. That equals 4,000 work days for the 400 acre

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<sup>5</sup> Wages for a ten minute break, based upon minimum wage would be \$ 1.51 for 2012, \$1.53 for 2013 and \$1.55 for 2014.

farm. Assuming each work day included two rest breaks at minimum wage, the average farmer would owe \$36,720 in back wages. RCW 49.52.070 doubles damages for willfully withheld wages and allows the employee to recoup attorneys' fees. Small farmers operate on thin margins and profits are often reinvested in the next growing season. A debt of \$100,000 or more would be devastating to many.

Petitioners' proposal of a rest break based upon each employee's piece rate is even more disastrous. Under a worst case scenario, an average farm of about 400 acres would owe each employee \$9.26 per day of back pay (\$25 per bin and 10 bins picked per day of work). Wash. State DLI Employment Standard C6. Multiplied by 4,000 working days, and multiplied by three years and doubled under the wage claim statute and an average employer could owe more than \$200,000. Retroactive application of Petitioners' proposal will not serve the public policy underlying the rest break regulation. It will simply create an avenue for thousands of back wage claims that will put a minimal amount of money in farm workers' pockets but pay hundreds of thousands of dollars in attorneys' fees. Such lawsuits will put many smaller to mid-size farms out of business. A policy supporting fair treatment of farm workers is not served by putting farmers out of business.

## V. CONCLUSION

For the reasons stated above, Amici respectfully request that this Court rule that Washington law does not require agricultural employers to pay piece rate workers separate and additional pay for rest breaks but, instead, the pay for these rest breaks is already included in piece rate compensation. Amici further requests that, if the Court rules in Petitioners' favor, that this decision will only have prospective application on rest breaks from the date of the decision forward.

RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of February, 2015.

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IN THE SUPREME COURT  
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CERTIFICATION FROM  
THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF WASHINGTON

ANA LOPEZ DEMETRIO and FRANCISCO EUGENIO PAZ,  
individually and on behalf of all others similarly situated,

Petitioners/Plaintiffs,

v.

SAKUMA BROTHERS FARMS, INC.,

Respondent/Defendant.

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CERTIFICATE OF SERVICE

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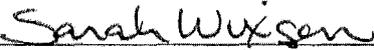
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I, SARAH L. WIXSON, hereby certify that

On February 19, 2015, on behalf of Washington Farm Labor Association, Washington State Tree Fruit Association and Washington Growers League, I caused to be filed the Amicus Brief with the Washington Supreme Court by emailing said document to Clerk of the Court at Supreme@courts.wa.gov and to:

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### Documents Filed:

1. Amicus Brief (revised per court directive of February 12, 2015)
2. Certificate of Service

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