NO. 1035896

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

RHEANNON ANDROCKITIS, individually and on behalf of all persons similarly situated,

Respondent/Plaintiff,

v.

VIRGINIA MASON MEDICAL CENTER, a Washington corporation,

Petitioner/Defendant.

RESPONDENT/PLAINTIFF'S ANSWER TO AMICUS BRIEF OF WASHINGTON STATE HOSPITAL ASSOCIATION IN SUPPORT OF PETITION FOR REVIEW

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I. INTRODUCTION

The Washington State Hospital Association ("WSHA") argues this Court should accept review to correct an imaginary conflict between Division One's Opinion and inapposite case law regarding punitive damages. Respondent-Plaintiff already explained the flaws in this argument in her answer to Virginia Mason's Petition for Review.

Beyond that, WSHA's brief posits a number of speculative concerns regarding damages for interrupted, late, and shortened meal breaks that are not presented by the facts of this case, raised by Virginia Mason's Petition, or decided by Division One. These hypotheticals provide no basis for granting review.

Finally, WSHA's brief exhibits a willful disregard over the value of adequate breaks for workers that is particularly shocking here given the relationship between breaks and patient health and safety. Division One's well-reasoned Opinion, which rests firmly on prior rulings of this Court and guidance from the Washington Department of Labor and Industries ("L&I"), properly

recognizes the importance of these workplace rights. Granting review would only harm the public interest by needlessly prolonging this litigation and further delaying compensation to the injured healthcare workers.

II. ARGUMENT

The bulk of WSHA's brief is premised on misstatements of law, faulty reasoning, and hypotheticals that are not presented by this case or Division One's decision. WSHA demonstrates no conflict with existing law, error in reasoning, or public interest that warrants granting review.

A. Damages For Interrupted, Late, And Shortened Meal Breaks Are Not At Issue Here.

WSHA repeatedly raises arguments regarding the measure of damages for interrupted, untimely, or shortened meal periods. Because these issues are not presented by the record in this case, encompassed by Virginia Mason's Petition for Review, or decided by Division One, WSHA's hypothetical concerns provide no basis for granting review.

This case involves *missed* meal periods, not interrupted, shortened, or untimely breaks. The record contains no evidence that Virginia Mason's employees reported meal breaks as missed when they were merely interrupted, late, or shortened by a minute or two. Rather, Virginia Mason instructed workers to report meal breaks as "missed" when they were skipped due to workload requirements. *See* CP 215 ("You will record 'Cancel Meal Deduction' in Kronos if you skip lunch due to patient workload."). Employees frequently accompanied these reports with comments indicating they had to work through the breaks. *See* CP 739 (list of comments, including, "Attended Meeting During Lunch Time" or "Worked Through Meal Break").

Virginia Mason's Petition for Review also says nothing about interrupted, untimely, or shortened. Rather, the Petition frames the issue thusly: "Must Washington employers compensate employees who *work through* an unpaid meal period with an additional 30 minutes of wages, on top of the wages paid for the work performed?" Pet. at 4 (emphasis added). Nor does

WSHA point to anywhere in Division One's Opinion where the court decides what damages would be appropriate for interrupted, untimely, or shortened breaks. WSHA's hypothetical concerns regarding employees whose meal breaks are shortened by a minute or started one minute late provide no basis for granting review.

B. The Damages Awarded Here Are Compensatory Not Punitive.

WSHA next argues that the 30-minutes of damages awarded here are punitive, not compensatory, and constitute "an entirely arbitrary amount unrelated to the amount of actual damage." Amicus Br. of WSHA at 6. Nothing is further from the truth.

Virginia Mason's workers reported missing their 30-minute meal periods because of work demands. Therefore, 30 minutes of wages is the proper measure of compensatory damages and entirely consistent with the earlier decisions of this Court.

These damages are not a penalty for Virginia Mason's failure to comply with the meal break rule but compensation for violation of its employees' rights. As L&I explained below, the damages are necessary compensation for the workers' "involuntary foregoing" of their meal period rights. Amicus Br, of Dep't of Lab. & Indus. at 9.

As L&I also pointed out, Washington law often provides both compensatory damages, which are paid to injured workers, and penalties, which are paid to the State. *Id.* at 10. For example, the law includes both a compensatory cause of action for workers who have experienced wage theft (RCW 49.46.090) and "penalties" due the State for an employer's wage violations (RCW 49.48.060). The Industrial Welfare Act likewise authorizes the State to seek "penalties" for various statutory violations. *See, e.g.*, RCW 49.12.285 (authorizing L&I to seek "penalties" for sick leave violations, which "shall be deposited into the general fund); RCW 49.12.390 (same for "penalties" for child labor law violations). But these are distinct from workers'

implied right of action for violation of their break rights. The courts and legislature have recognized the same distinction between private compensatory rights and state-imposed penalties in other contexts. *See, e.g.*, *Aungst v. Roberts Const. Co.*, 95 Wn.2d 439, 442, 625 P.2d 167 (1981) (recognizing distinction under Consumer Protection Act between private actions for damages and actions for a "penalty" brought by the Attorney General); *Leson v. State*, 72 Wn. App. 558, 563, 864 P.2d 384 (1993), *as amended* (1994) (recognizing distinction between "compensatory damages" for injury to a person or property and "penalty" that can be sought by the Department of Ecology for violation of water pollution laws).

WSHA's position would result in workers being paid *nothing* for violation of their meal period rights; they would be paid for their time worked (as required by the Minimum Wage Act) but receive no compensation for loss of the breaks guaranteed them under the Industrial Welfare Act. Consistent with this Court's precedents, Division One rejected this

argument and correctly held that the damages awarded here are necessary to make whole and recompense the injury suffered by the employees.

C. The Differentiation Between Paid And Unpaid Breaks Is A Distinction Without A Difference.

WSHA argues that the rulings below are "flawed" because they treat Virginia Mason's failure to release an employee from duty for an unpaid meal break the same as requiring an employee to work through a paid rest or meal break. However, there is no difference between failing to release an employee from duty and requiring them to work through a meal break. Likewise, the differentiation between paid and unpaid breaks in this context is a distinction without a difference.

In both instances, the injury suffered by the worker is the same – the denial of time to rest and recuperate. WSHA portrays this is a meaningless harm but this demonstrates its fundamental misunderstanding of the break requirement. The purpose of the break rule is not to ensure that employees get paid for all hours worked. That is already accomplished by the Minimum Wage

Act. Rather, the rule is intended to promote employees' well-being by providing them with needed relief from exertion, to rest, eat, and recuperate. *See* RCW 49.12.010; *Demetrio v. Sakuma Brothers Farms, Inc*., 183 Wn.2d 649, 658-59, 355 P.3d 258 (2015); *White v. Salvation Army*, 118 Wn. App. 272, 275, 283, 75 P.3d 990 (2003). That need is even more critical here, where the absence of adequate breaktime endangers the health and safety of patients as well as workers. *See Washington State Nurses Ass'n v. Sacred Heart Med. Ctr.*, 175 Wn.2d 822, 832, 287 P.3d 516 (2012) (noting that rest breaks "help ensure nurses can maintain the necessary awareness and focus required to provide safe and quality patient care").

Moreover, the distinction between unpaid and paid meal breaks dissolves here, because once an employer "fail[s] to release an employee from duty," the meal break converts from unpaid to paid. *See* CP 917-18, §7 (L&I Admin. Policy ES.C.6.1). If the employer then fails to provide the requisite work-free time, it must compensate the employee for the missed

meal break in addition to paying for all hours worked. *See Hill v. Garda CL Nw., Inc.*, 198 Wn. App. 326, 361, 394 P.3d 390 (2017) ((holding that employers must compensate workers for missed meal breaks even though the workers "were paid for every minute they worked"), *aff'd in part, rev'd in part and remanded*, 191 Wn.2d 553, 424 P.3d 207 (2018); *Pellino v. Brink's Inc.*, 164 Wn. App. 668, 690, 267 P.3d 383 (2011) (same). WSHA's position would lead to the untenable conclusion that employers can escape all liability for breaching workers' meal break rights merely by promising (but failing to provide) unpaid rather than paid meal breaks.

Nor is it relevant that employees can waive their meal periods. As the trial court and Division One concluded – and Virginia Mason does not contest here – there is no evidence that employees waived their meal breaks in this case. *See* Opinion at 33-34. The possibility that employees in other instances might waive their meal breaks has no bearing on the compensation due to the employees here, who labored through their breaks due to

workload demands. Thus, the Opinion properly relied on *Wingert v. Yellow Freight Systems, Inc.*, 146 Wn.2d 841, 848-49, 50 P.3d 256 (2002), and cases like *Hill* and *Pellino*, which hold that *Wingert* applies with the same force to meal breaks. *See, e.g.*, *Pellino*, 164 Wn. App. at 690.

D. There Is No Conflict Between Division One's Opinion And Any Other Court Holding.

Nor does WSHA show that Division One's Opinion conflicts with any other holding of this Court. For example, WSHA argues that *Hill* and *Pellino* should be limited to their "extreme" facts, WSHA Br. at 10, but this Court has already rejected this argument in *Brady v. Autozone Stores, Inc.*, a case involving unpaid meal breaks for retail store employees. 188 Wn.2d 576, 583, 397 P.3d 120 (2017) ("While *Pellino* could be distinguished from the present case because it turned on different facts ..., nevertheless, because *Pellino* ultimately provides greater protection for workers, it is more in tune with other Washington case law addressing employee rights."). Indeed, it is ironic that WSHA seeks to distinguish *Pellino* and *Hill* on the

basis that those employees were required to remain constantly vigilant to protect money in their armored cars, when the nurses and caregivers in this case were forced to miss their breaks to guard against harm to their ill and injured patients.

WSHA similarly mischaracterizes the facts and holdings of *White* and *Iverson v. Snohomish County*. In both cases, the courts held that the plaintiffs were not entitled to any additional compensation because they already had received all the work-free break time required by law. *See White*, 118 Wn. App. at 275, 283-84 (explaining that although the counselors remained on-call during their meal periods, they received more than enough time to "rest, eat, or attend to personal matters"); *Iverson*, 117 Wn. App. 618, 622, 72 P.3d 772 (2003) (holding that plaintiff produced no evidence that work duties took up more than a *de minimis* amount of his meal break time). *See also Hill*, 198 Wn. App. at 356, 361 (distinguishing *White* and *Iverson*); *Pellino*, 164 Wn. App. at 398 (same). Here, by contrast, Virginia Mason did not provide the 30 minutes of work-free time required by law.

Thus, there is no conflict between *White* or *Iverson* and Division One's Opinion in this case.

E. The Compensation Awarded Here Does Not Conflict With Recent Legislation.

WSHA suggests that Division One's Opinion conflicts with recent legislation empowering L&I to impose penalties on health care facilities that repeatedly violate rest and meal break laws. *See* Amicus Br. of WSHA at 12-13 (citing 2023 Wash. Laws ch. 114, codified at RCW 49.12.283). WSHA's interpretation of this law is incorrect.

To begin, the legislature's intent in passing the law was to address widespread understaffing and abuse of break rules by hospitals to the detriment of their nurses and other patient care providers. As its supporters stated, "Hospitals need to be accountable." H. Bill Rep. E2SSB 5236, at 10 (Wash. 2023). The preclusion of compensatory remedies advocated by WSHA would have the opposite effect. Indeed, it would grant non-compliant hospitals an immunity from compensatory damages not enjoyed by any other employer.

Moreover, L&I agrees that this legislation does not preclude private rights of action for meal break damages. *See* Amicus Br. of L&I at 12-13. As the agency charged with administering the new law, L&I's interpretation is entitled to substantial weight. *See Schneider v. Snyder's Foods, Inc*., 116 Wn. App. 706, 716, 66 P.3d 640 (2003). Thus, the damage award here in no way "usurps the role assigned solely to the Legislature." Amicus Br. of WSHA at 13.

F. Review Is Not Warranted Under RAP 13.4(b)(4).

WSHA argues that the Opinion has left the state of meal and rest break law "completely uncertain," but provides no support for this assertion. The one example it cites, that L&I has "carrie[d]" the Opinion into its new administrative policy on breaks for health care workers, makes no logical sense, as L&I adopted that policy four months *before* Division One issued its Opinion. *See* L&I Admin. Policy HLS.A.2 (adopted June 20, 2024). Whatever problems WSHA has with L&I's policy, they

were not created by the Opinion and are not before the Court here.

Similarly, WSHA asserts without any support or explanation that the Opinion "will have an astounding impact on healthcare delivery in this state." Amicus Br. of WSHA at 14. But the obligation to provide lawful meal breaks to nurses and other patient care providers is clear and well-established in the law. The Opinion creates no new obligation. Rather, the Opinion promotes compliance with existing law and the public interest in ensuring adequate break time for patient care providers, interests that would be disserved by granting review and prolonging litigation of this case.

As for WSHA's car-collision hypothetical, the true analogy is this: under WSHA's position, a person injured by a negligent driver could recover their medical expenses but nothing for pain, suffering, or other harms. This is not and has never been the law in Washington.

Finally, WSHA's assertion that the Opinion would require 120 minutes of pay for each missed break is another example of faulty logic and flawed math. *See* Amicus Br. at of WSHA 2 n.1. When an employer fails to provide a required meal break, it owes 30 minutes of compensation, that is all.[1] Here, however, not only did Virginia Mason fail to pay for the meal period violation, it automatically *deducted* a half-hour from workers' pay and failed to restore that deduction unless workers canceled the auto-deduct. In those instances, Virginia Mason indeed owes 60 minutes of pay but only 30 minutes of that is compensation for the missed meal break. The rest is simply pay for time worked.

III. CONCLUSION

When an employer like Virginia Mason fails to provide workers with their legally-required meal breaks, it does more than just harm their "dignity." Amicus Br. of WSHA at 15. It denies them the respite from work necessary to protect their

[1] Unless, as here, the employer fails to pay for the violation, in which case the non-payment is also willful and subject to doubling under RCW 49.52.070.

health and well-being. The Opinion correctly affirmed compensation for this harm. No further review is warranted.

DATED this 23rd day of January, 2025.

I certify that this document contains **2,488** words, in compliance with the RAP 18.17.

Respectfully submitted,

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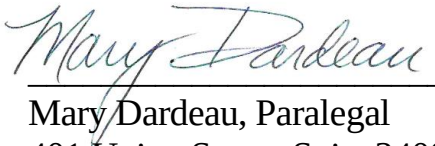

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