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.

ANSWER TO PETITION FOR DISCRETIONARY REVIEW

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I. INTRODUCTION

Petitioner Virginia Mason Medical Center's challenge to the comprehensive and well-reasoned opinion of the Court of Appeals can be summed up thusly: "but we've already paid them for all hours worked!" This observation, however, is no defense at all, as paying employees for all hours worked is an employer's baseline obligation. But when employers fail to provide workers with their meal breaks, as Virginia Mason has done, the law has long-recognized a remedy in the form of *additional* wages for the time they should have been relieved from duty, but worked instead. This is not a "penalty," but the fair measure of damages for break violations.

Virginia Mason has not shown any conflict between Division One's opinion and any decision of this Court. Rather, the opinion is consistent with an extensive line of caselaw and long-standing guidance from the Washington Department of Labor and Industries ("L&I) establishing an employer's obligation to monetarily compensate workers for rest and meal

break violations. Division One correctly held that this authority supported the award of compensatory damages *and* eliminated any bona fide dispute that such compensation was owed. There is no public interest in retracing this well-trodden ground or further delaying recovery for Plaintiff-Respondent Rheannon Androckitis and the certified class of Virginia Mason employees. The Petition should be denied.

II. STATEMENT OF THE CASE

A. Virginia Mason's Timekeeping System.

Virginia Mason employs thousands of nurses, health care technicians, and other staff throughout Puget Sound. During the time period at issue in this case, it used an electronic timekeeping system, Kronos, to track employee time and attendance.

Despite knowing that its nurses, technicians, and other staff did not always get their breaks, Virginia Mason programmed Kronos to assume that they received an unpaid, 30-minute meal period on each shift longer than five hours. When employees worked more than five hours, the system

automatically deducted 30 minutes from their pay on this assumption. If an employee did not receive their meal period *and* canceled the auto-deduct, the system restored 30 minutes to their total hours worked for the day. While this had the effect of paying the employee for all hours worked, Virginia Mason did not provide employees any compensation for violation of their meal period rights. For example, if an employee worked from 8:00 am to 4:30 pm and canceled the auto-deduct because they worked straight through without a lunch break, Virginia Mason paid them for eight-and-a-half hours of work and nothing more, as if the meal period violation never occurred.

There were other problems with Virginia Mason's timekeeping system. If workers reported a missed meal break but failed to separately cancel the 30-minute auto-deduct, they would not even be paid for all their time worked. If workers reported a missed rest break but their managers failed to enter a "Missed Rest Break" code in Kronos, they received no compensation for the missed rest break.

Although these other issues of under-compensation were also the subject of judgment and proceedings below, Virginia Mason's Petition for Review raises only the question of whether it must compensate employees for violating their meal break rights if it has paid them for all hours worked (i.e., when the worker in fact canceled the auto-deduct). Division One correctly held that it must.

B. Procedural History And Decisions Below.

Androckitis filed her class action complaint on March 24, 2020, alleging that Virginia Mason failed to fully compensate her and other employees for missed rest and meal breaks they reported in Kronos. Androckitis sought, *inter alia*, compensatory damages under the Industrial Welfare Act ("IWA"), RCW 49.12, and Minimum Wage Act ("MWA"), RCW 49.46, and exemplary damages under the Wage Rebate Act ("WRA"), RCW 49.52.

The superior court granted Androckitis' motion for class certification; the parties then filed cross-motions for summary judgment on all claims. The court granted Androckitis' motion

and held that Virginia Mason owed 30 minutes of compensation for all reported missed meal periods, as well as exemplary damages and prejudgment interest on Plaintiff's rest and meal break claims. CP 1174. Virginia Mason unsuccessfully sought discretionary review. The parties then entered into a stipulated judgment "for purposes of foregoing a trial on damages and in order to position the case for appeal." CP 1252-56.

Virginia Mason appealed to Division One, which affirmed the superior court's judgment in all respects. Before Division One, Virginia Mason raised numerous arguments challenging numerous aspects of the superior court's summary judgment orders, most of which it abandons here. In its current Petition, Virginia Mason challenges only the holdings that (a) workers are entitled to 30 minutes of compensation when they are denied their legally required meal periods and (b) this entitlement is not reasonably debatable under Washington law, making Virginia Mason liable for double damages for its failure to compensate workers.

III. ANSWER TO PETITION FOR REVIEW

A. Standard Of Review.

This Court accepts review only on limited grounds. *See* RAP 13.4(b). Virginia Mason argues that the challenged holdings are reviewable under RAP 13.4(b)(1) and (b)(4). Review under (b)(1) is inapplicable because the holdings do not conflict with any decisions of this Court, and review under (b)(4) is not warranted because existing authority provides ample guidance on the compensation owed for meal break violations under state law. Division One's decision was a routine application of established law and as such does not justify the extraordinary step of review by this Court.

B. Division One's Holding Does Not Conflict With Any Decision Of This Court Regarding An Employee's Right To Compensation For Meal Break Violations.

Virginia Mason fails to demonstrate that Division One's holding conflicts with any decision of this Court regarding the compensation due when an employer fails to meet its "mandatory obligation" to provide lawful meal breaks. *Brady v. Autozone*

Stores, Inc., 188 Wn.2d 576, 584, 397 P.3d 120 (2017). To the contrary, Division One's holding is consistent with, and indeed compelled by, an extensive line of precedent from this Court and the courts of appeal, long-standing guidance from L&I, and the remedial purposes of the IWA.

In Washington, workers have an implied right of action – a remedy – for break violations under the IWA, separate and apart from their right to be paid for work. That remedy, affirmed by the courts time and again, comes in the form of wages for the time an employee should have been relieved from duties, but was working instead. This is not a "penalty" but compensation for a workplace violation.

Yes, Virginia Mason pays workers for time spent working (assuming they cancel the meal period auto-deduct). Paying employees to work is, among other things, a basic requirement of the MWA. But merely paying for work (per the MWA) does not satisfy the separate requirement (per the IWA) to periodically relieve employees from that work – to rest, eat, recuperate.

Division One correctly recognized these are distinct rights with independent remedies under Washington law.

1. Well-established caselaw recognizes an implied right of action for damages for break violations.

Virginia Mason primarily argues that Division One's opinion conflicts with caselaw holding that only the legislature may authorize penalties or punitive damages for statutory violations. Pet. at 14. This argument is fundamentally flawed in at least two respects. First, the damages awarded by the trial court and affirmed by Division One were compensatory, not punitive. Second, and relatedly, for more than 20 years, this Court and other Washington courts have held that an implied cause of action exists for violation of break rights under the IWA. Virginia Mason's argument – that paying employees anything more than wages for time spent working constitutes a "penalty" – cannot be squared with this caselaw, which recognizes monetary damages in the form of wages as the necessary and proper remedy for employers' rest and meal break violations.

The starting point is *Wingert v. Yellow Freight System, Inc.*, where this Court held truck drivers had an implied cause of action to enforce their right to rest breaks under WAC 296-126-092. 146 Wn.2d 841, 849-850, 50 P.3d 256 (2002). Such right, the Court reasoned, must come with a remedy, which takes the form of additional wages. *Id*. at 848-51. In reaching this conclusion, the Court relied on its earlier decision in *Bennett v. Hardy*: "Where a statute creates a new right but no remedy, the common law will provide that remedy." 113 Wn.2d 912, 920, 784 P.2d 1258 (1990).

Since *Wingert*, Washington courts have consistently recognized wages as the remedy for rest and meal break violations and have rejected the $0 damages (or "penalty") argument Virginia Mason makes here. *See, e.g., Chavez v. Our Lady of Lourdes Hosp.*, 190 Wn.2d 507, 511 n.1, 518, 415 P.3d 224 (2018) (holding "[t]he law requires [employers] to compensate [their employees] for all missed breaks" and defining "missed breaks" to include both rest and meal breaks);

Washington State Nurses Ass'n v. Sacred Heart Med. Ctr., 175 Wn.2d 822, 831-32, 287 P.3d 516 (2012) ("*WSNA*") (holding that nurses were entitled to 10 minutes of compensation for each missed rest break in addition to being paid for time worked during the break); *Hill v. Garda CL Nw., Inc.*, 198 Wn. App. 326, 361, 394 P.3d 390 (2017) (holding meal break violations must be treated as separate wage violations 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; holding that *Wingert* applies with "equal force" to meal breaks). Thus, the damages awarded by Division One and the superior court under the MWA and IWA are not punitive or a penalty, they are compensation for the meal breaks the law requires but Virginia Mason did not provide.

Virginia Mason tries to escape the import of these opinions by mischaracterizing their facts and holdings. It incorrectly asserts that "in these cases, a wage-based remedy was imposed

to ensure that the employees were paid for any additional work they had done." Pet. at 16; *see also id*. at 11. In fact, in each of these cases, the workers had already been paid for all hours worked, and the damages awarded were compensation for the missed rest or meal break.

For example, in *Hill*, the employer argued it did not owe any compensation for missed meal breaks "because [the employees] were paid for all the time they worked." 198 Wn. App. at 360. The Court of Appeals rejected that argument and affirmed the award of 30 minutes of wage damages for each missed meal break even though the workers "were paid for every minute they worked." *Id*. at 361 & n.38 (noting the same result in *Pellino*). Similarly, in *Wingert* and *WSNA*, the workers were paid for all time from the start to the end of their shifts; they were entitled to compensation not because they had performed work off-the-clock but because they did not receive their breaks. *See WSNA*, 175 Wn.2d at 825; *Wingert*, 146 Wn.2d at 849 (rejecting employer's argument "that its employees have been paid for all

the time they worked, so its failure to provide rest periods has not resulted in lost wages").

Hill also demonstrates the fallacy in Virginia Mason's argument that the damages awarded here are a penalty, rather than compensatory. In *Hill*, the Court of Appeals affirmed the trial court's back pay award but reversed the trial court's award of double damages under RCW 49.52.070. In other words, the court recognized the distinction between 30 minutes of compensatory damages under the MWA and IWA and exemplary (punitive) damages under the WRA.

This Court's opinion in *Hill* confirms this distinction. The Court held that exemplary damages for meal break violations could be awarded under the WRA, in addition to compensatory damages under the MWA and IWA. *See* 191 Wn.2d at 561, 573. Notably, the WRA authorizes courts to award "twice the amount of the wages unlawfully rebated or withheld by way of exemplary damages." RCW 49.52.070. Thus, wages must be owing in the first place for there to be an award under the WRA.

If Virginia Mason is correct and no wage compensation is owed for a missed meal period, then the plaintiffs in *Hill* could not possibly have been entitled to exemplary damages. Thus, *Hill* flatly contradicts Virginia Mason's argument that an award of back pay damages for an employer's meal break violation is "punitive" simply because the employer has paid for all time worked.

Nor is Virginia Mason correct when it asserts that Division One's decision is "unprecedented" and "is the first to address the remedy imposed when an employee is deprived of an otherwise unpaid meal period." Pet. at 1. In *Alvarez v. IBP, Inc.*, a case involving unpaid meal breaks, the Ninth Circuit held that workers are entitled to a "full thirty-minute remuneration" under Washington law where the employer infringes on their meal breaks "to any extent." 339 F.3d 894, 913, 914 (9th Cir. 2003), *aff'd*, 546 U.S. 21 (2005) (citing L&I Admin. Policy ES.C.6). The court ordered this compensation *in addition to* the pay already awarded for all time worked, including the donning and

doffing time that infringed on the workers' meal breaks. *Id*. at 901, 914. Regardless, whether the meal break was intended to be paid or unpaid, the harm (loss of respite from work) is the same and so too the remedy (30 minutes' wages).

Finally, the legislature has been aware of the courts' holdings in *Wingert*, *WSNA*, *Pellino*, and *Hill* for over twenty years and has never acted to eliminate the implied cause of action for break violations applied in those cases. Its acquiescence signals approval of the judicial construction of the IWA and refutes Virginia Mason's argument that the courts, in this case and those, have impermissibly intruded on the legislature's exclusive province to authorize penalties or punitive damages. *See Buchanan v. Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers*, 94 Wn.2d 508, 511, 617 P.2d 1004 (1980) ("The failure of the legislature to amend the statute in the 17 years since the [] decision was rendered convinces us that it was and is the policy of the legislature to concur in that result.").

2. Using wages as a measure of damages is consistent with this Court's holdings.

In a variation on its "penalty" argument, Virginia Mason argues that Division One's approval of 30-minutes of wages as damages for the meal break violations must be punitive because it has no relationship to the harms suffered by employees. There are at least three flaws with this argument

First, as discussed above, Washington courts have long recognized that wages are the appropriate measure of damages for denial of rest and meal break rights. Failure to provide a legally compliant meal period constitutes a "wage violation" as well as a labor violation. *Hill*, 198 Wn. App. at 360; *see also WSNA*, 175 Wn.2d at 830 (recognizing payment of overtime wages as proper remedy for rest break violations); *Wingert*, 146 Wn.2d at 850. If employers fail to provide a meal period, they must provide an additional 30 minutes of wage compensation, even if they have already paid for all hours worked. *See Hill*, 198 Wn. App. at 360-62, *Pellino*, 164 Wn. App. at 699; *IBP*, 339 F.3d at 913-914. Therefore, Virginia Mason cannot show any conflict

between Division One's opinion and this Court's decisions on this basis.

Second, measuring compensation for meal break violations in terms of wages makes perfect sense. For better or worse, wages are how we measure the value of an individual's time in the workplace environment.

Third, Virginia Mason never argued below that meal break damages cannot be measured by wages because different workers may value respite differently. *See* Pet. at 18-19. Nor did it argue that workers may be entitled only to "nominal damages" for violation of their meal break rights. *Id.* at 22. Rather, while Virginia Mason *now* claims it "is not asserting that employees denied meal periods should be deprived of any compensation," *id.*, that is precisely what it asserted before the superior court and Division One. *See, e.g.*, CP 966-67, 976 (arguing that employees denied meal periods were not entitled to any compensation beyond being paid for their hours worked); Appellant's Opening Br. at 37, 51-53 ("The Correct Measure of Damages under the

MWA for Unpaid Meal Periods is Payment for Time Worked"). And, Virginia Mason stipulated to the judgment amount after the court granted Androckitis' summary judgment motion on liability. In other words, Virginia Mason has always advanced an "all or nothing" defense until now.

The Court should not countenance Virginia Mason's shifting defenses or entertain these arguments for the first time on appeal. *See Smith v. Shannon*, 100 Wn.2d 26, 37, 666 P.2d 351 (1983) ("Failure to raise an issue before the trial court generally precludes a party from raising it on appeal.").[1] Even if considered, Virginia Mason's suggested approaches would create unworkable standards that would conflict with this Court's

[1] This is not the first time Virginia Mason has attempted to inject new arguments on appeal. Before Division One, it argued for the first time that factual questions precluded summary judgment for Plaintiff, a contention the court correctly rejected. *See, e.g.*, App. A at 45-46. RAP 2.5(a) exists specifically to prevent the whack-a-mole approach to litigation Virginia Mason follows here.

precedents and deny employees effective and adequate relief for violation of their meal break rights.

3. Division One's holding is consistent with L&I guidance requiring employers to compensate workers for meal break violations.

Division One's opinion not only is consistent with judicial precedent, it squarely follows L&I's longstanding guidance regarding compensation for meal break violations. Contrary to Virginia Mason's suggestion, this is not a novel position contained only in L&I's amicus brief. Rather, it has long been part of the agency's published Administrative Policy interpreting its rest and meal break regulation.

In this policy, L&I explains that when an employee is required to do *any* work during a meal period, not only is the entire meal period considered hours of work that must be paid, but the employer must *either* provide the employee with a total of 30 minutes of paid duty-free time *or* pay an "extra 30-minute meal break":

> As long as the employer pays the employees during a meal period in this circumstance *and otherwise complies with the provisions of WAC 296-126-092*, there is no violation of this law, and payment of an extra 30-minute meal break is not required.

CP 917-18, § 7 (emphasis added).

While worded in the negative, this subsection clearly states that when an employer fails to comply with the provisions of WAC 296-126-092 (*i.e.*, by providing an employee with 30 minutes of duty-free time), the employer must provide "payment of an extra 30-minute meal break" in addition to paying for all hours worked.

Indeed, the Ninth Circuit relied on the predecessor version of this policy to conclude that WAC 296-126-092 "evinces a clear, bright-line standard" and that workers are entitled to a "full thirty-minute remuneration" under Washington law where the employer infringes on their unpaid meal breaks "to any extent." *IBP*, 339 F.3d at 913. *Pellino* likewise relied on this policy in holding that 30 minutes' compensation for meal break violations was required. 164 Wn. App. at 689. L&I cited to this policy in its

amicus brief o evince its "longstanding position … that workers must receive payment for time that they spent working *and* receive the lunch break…. If the break is not provided than an employer must provide additional compensation." Brief of Amicus Curiae Dep't of Lab. & Indus. at 7-8 (citing ES.C.6.1 at 3-4) (emphasis in original). And Division One did not simply rely on L&I's amicus brief but independently discussed the policy in supporting its holding. *See* App. A at 30.

L&I's interpretation of the WAC in the administrative policy is entitled to great deference. *Brady*, 188 Wn.2d at 581. The consistency of Division One's holding with L&I's guidance confirms its correctness and obviates any need for further review.

4. Recently promulgated agency guidance and legislative amendments do not conflict with Division One's opinion.

Virginia Mason also references two recent developments to challenge Division One's opinion: L&I's promulgation of Administrative Policy HLS.A.2 (July 1, 2024); and legislative amendment of RCW 49.12.483(2)(b). Neither helps its cause.

To begin, both of these developments are irrelevant, because they postdate the meal break violations in this case by several years and do not shed light on what the law required at the time.

More importantly, Virginia Mason continues its pattern of mischaracterization in discussing these developments. With respect to Policy HLS.A.2, Virginia Mason asserts "the Department makes clear it is attempting to enact penalties for meal-period and rest-break violations." Pet. at 21. However, a plain reading shows that L&I is in fact delineating the *compensation* owed for such violations. *See* Admin. Policy HLS.A.2 at 8 ("The following chart provides a breakdown of how covered healthcare employees *must be compensated* in these circumstances.") (emphasis added). Moreover, L&I quantifies that compensation in terms of wages, consistent with Division One's opinion here. *Id.* Virginia Mason may not agree with L&I's guidance or even its authority but this is not the right forum for airing those grievances.

Similarly, RCW 49.12.483(2)(b), as amended, authorizes L&I to levy administrative penalties for a hospital's repeated violation of rest and meal break rules. But nothing in the provision suggests that the penalties are an exclusive remedy or refutes the private right of action for compensatory damages recognized in *Wingert*, *Pellino*, and *Hill*. *See Glass v. Stahl Specialty Co*., 97 Wn.2d 880, 887-88, 652 P.2d 948 (1982) (holding that the legislature is presumed to be familiar "with past judicial interpretations of its enactments" and will not be presumed to overrule those interpretations without clear indication). If anything, the amendment signals legislative recognition of the importance of break time for health care workers and the fact that some employers routinely fail to comply, a situation that supports the relief awarded below.

In sum, there is no conflict between any decision of this Court and Division One's holding that workers are entitled to 30 minutes of wage compensation for meal break violations. The Petition should be denied.

C. Division One Correctly Held That Virginia Mason's Failure To Compensate Workers for Meal Break Violations Is Not Subject To Bona Fide Dispute.

"The [Washington] Legislature has evidenced a strong policy in favor of payment of wages due employees by enacting a comprehensive scheme to ensure payment of wages, including the statutes at issue here which provide both criminal and civil penalties for the willful failure of an employer to pay wages." *Schilling v. Radio Holdings, Inc*., 136 Wn.2d 152, 157, 961 P.2d 371 (1998) (discussing RCW 49.52.050 and.070). Those statutes make the employer liable for double damages when it has willfully withheld wages owed. They are construed liberally "to see that the employee shall realize the full amount of the wages which by statute, ordinance, or contract he is entitled to receive from his employer…." *Id*. at 159.

Under RCW 49.52.070, "[t]he standard for proving willfulness is low." *Hill*, 191 Wn.2d at 561 (reversing appellate court's denial of exemplary damages for meal break violations) (internal citations and quotations omitted). A finding of

willfulness is defeated only where "a 'bona fide' dispute existed between the employer and employee regarding the payment of wages." *Schilling*, 136 Wn.2d at 157. A "bona fide dispute" exists only if the disagreement is "objectively reasonable." *Hill*, 191 Wn.2d at 562. Given the remedial purposes of the WRA and the strong public policy in favor of prompt payment of wages, the "bona fide dispute" exception is narrowly construed. *Department of Labor & Indus. v. Overnite Transp. Co*., 67 Wn. App. 24, 34, 834 P.2d 638 (1992). "The burden is on the employer to show the existence of such a bona fide dispute." *Hill*, 191 Wn.2d at 562.

Here, Division One correctly concluded there was no bona fide dispute that Virginia Mason owed compensation for its meal break violations. Virginia Mason argues Division One erred but it does not and cannot point to any conflict between Division One's opinion and a decision of this Court. To the contrary, Virginia Mason's argument is squarely rebutted by the authorities discussed above. Its failure to pay compensation for

its meal break violations directly contravenes L&I's administrative policy and the caselaw set forth in *Pellino*, *Hill*, *IBP*, and *Wingert*. All these authorities were in place well before the time at issue here. Indeed, based on these authorities, management-side law firms and government agencies have long advised employers to pay compensation, in addition to remunerating all hours worked, when they fail to provide workers with compliant meal periods. *See* CP 1132, 1140, 1137 ("If an employee receiving unpaid meal periods receives an interrupted, shortened, or completely missed meal break, credit the employee for the time worked, plus an additional 30 minutes."). The mere fact that Virginia Mason's attorneys can come up with *some* post hoc argument why it should not have to pay – for example, calling the damages a "penalty" rather than compensation – does not mean a bona fide dispute existed when the wages were due. Because Virginia Mason's obligation to pay compensation for missed meal breaks is and was not "fairly

debatable," there is no basis for granting review. *Schilling*, 136 Wn.2d at 161.

Recognizing the weakness of its position, Virginia Mason argues for the first time in the Petition that there was a bona fide dispute about the *amount* of compensation owed for its meal break violations. As discussed above, Virginia Mason never raised this argument before the trial court or the Court of Appeal. Instead, it consistently argued below that it owed *no* compensation, beyond paying for all hours worked, for its failure to provide meal periods to its workers. *See, e.g.*, CP 966-67, 976; Appellant's Opening Br. at 37, 51-53, 72-73. The Court should refuse to entertain this new argument now. *See Smith*, 100 Wn.2d at 37; RAP 2.5(a).

Even if the Court considers this argument, it provides no grounds for granting review. Virginia Mason contends that "[n]o court decision, statute, or regulation provided that employers must make an additional 30-minute payment – on top of the compensation for all work performed – of 30 minutes of wages

[sic] whenever employees miss a meal period." Pet. at 25. But this assertion is demonstrably wrong. For over 20 years, L&I's Administrative Policy has stated that if an employer fails to comply with the meal break requirements of WAC 296-126-092, "payment of an extra 30-minute meal break" is required. CP 917-18, § 7. Over 20 years ago, the Ninth Circuit cited this policy in *IBP* to order the payment of 30 minutes of remuneration, in addition to payment of all time worked, for an employer's infringement on workers' unpaid meal breaks. Over ten years ago, in *Brink's* and *Hill*, the Court of Appeals affirmed awards of 30-minutes compensation for missed meal breaks; and in *Hill* this Court held that exemplary damages were also applicable, subject to a possible bona fide dispute over FAAAA preemption unique to the armored car crews in that case. *Hill*, 191 Wn.2d at 572. Simply put, there is and was ample authority regarding the amount of compensation owed for meal break violations, and Division One correctly held there is no bona fide dispute regarding the back pay owed by Virginia Mason.

Finally, there is no substance to Virginia Mason's contention that this decision "will expose employers to substantially increased risk." Pet. at 27. There is no bona fide dispute that employers have a mandatory obligation to provide lawful meal breaks. Only employers that fail to do so *and* fail to compensate their workers for any meal break violations will be subject to exemplary damages under RCW 49.52.070. Employers who follow the law will face no increased risk, while employers who willfully disregard L&I's guidance and two decades of caselaw *should be* subject to exemplary damages as intended by RCW 49.52.070.

D. The Public Interest Does Not Warrant Review By This Court.

Virginia Mason fails to show any conflict between Division One's decision and any ruling of this Court, as required under RAP 13.4(b)(1). It also fails to show that the public interest warrants review under RAP 13.4(b)(4).

To be sure, the right of workers to receive lawful breaks is a matter of significant public importance. However, that is not

the interest urged by Virginia Mason's Petition. The public interest in protecting workers is already fully protected by the law, L&I guidance, and opinions of this Court and the courts of appeal. What Virginia Mason seeks is to shield employers from accountability when they violate their mandatory obligation to provide meal breaks to their workers. There is no public interest in reviewing Division One's opinion or prolonging this case on that basis.

Moreover, Virginia Mason provides no support for its assertion that "many employers" have assumed they do not need to compensate employees for violating their meal break rights. *See* Pet. at 28-29. And its argument that an employer would have to pay 90 minutes of compensation every time an employee misses an unpaid meal break is, again, demonstrably false. The first 30 minutes of compensation has nothing to do with the IWA or the meal break rule at all – it is simply payment for time worked. And only employers who willfully violate the meal

break requirements will be subject to double damages under RCW 49.52.070.

Finally, granting review would undermine Washington's strong public interest in ensuring prompt payment of wages when due. This case has been pending for over four years and involves meal break violations that are up to seven-and-a-half years old. Granting review would further delay the compensation owed to Plaintiff and thousands of class members in contravention of the public interest.

IV. REQUEST FOR FEES

Plaintiff-Respondent requests an award of fees and costs in opposing this Petition under RCW 49.46.090, 49.48.030, and 49.52.070.

V. CONCLUSION

For the foregoing reasons, the Court should deny the Petition for Review.

DATED this 9th day of December, 2024.

I certify that this document contains **4996** words, in compliance with the RAP 18.17.

Respectfully submitted,

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