IN THE SUPREME COURT OF THE STATE OF NEVADA

MDC RESTAURANTS, LLC, a Nevada limited liability company; LAGUNA RESTAURANTS, LLC, a Nevada limited liability company; INKA, LLC, a Nevada limited liability company,

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK and THE HONORABLE TIMOTHY WILLIAMS, District Judge,

Respondents,

and

PAULETTE DIAZ, an individual; lawanda fail wilbanks, AN INDIVIDAUL; SHANNON OLSZYNSKI, an inidivdiual; and CHARITY FITZLAFF, an individual, all on behalf of themselves and all similarly-situated individuals,

Real Parties In Interest.

Case No. 68523

Clark County District Court
Case No. A701633

PETITIONER'S REPLY IN SUPPORT OF MOTION TO STAY

NICHOLAS M. WIECZOREK (NSB #6170)
DEANNA L. FORBUSH (NSB #6646)
JEREMY J. THOMPSON (NSB #12503)
MORRIS POLICH & PURDY LLP
500 South Rancho Drive, Suite 17
Las Vegas, Nevada 89106
Ph. (702) 862-8300; Fax: (702) 862-8400
Email: nwieczorek@mpplaw.com
Email: jthompson@mpplaw.com
Attorneys for Petitioners MDC RESTAURANTS, LLC; LAGUNA RESTAURANTS, LLC; INKA, LLC

Petitioners hereby provide their reply to the Real Parties in Interest's Response to Petitioner's Motion for Stay pursuant to NRAP 27(a)(4). Real Parties in Interest fail to set forth any compelling reason for this court to deny Petitioner's request for a stay of the underlying district court proceeding. There is simply nothing "efficient" about allowing this court proceeding to move forward on flawed interpretations of law and decision-making that were so contrary to established precedent that the Nevada Supreme Court has received and accepted numerous amicus briefs on the issues. Petitioners request the Court grant its request to stay the underlying district court proceeding until the Court renders a decision pending the resolution of Petitioners' writ.

I. INTRODUCTION.

A stay of the underlying court proceeding is necessary to prevent the harm emanating from the issuance of the Real Parties in Interest's class notice and related classwide discovery. Moreover, contrary to Real Parties in Interest's assertion, granting Petitioner's request for a stay will advance judicial economy. Specifically, should the request for a stay be denied but subsequently the court overturns the district court's interpretation that "provide" means "enroll," the parties would have to re-litigate the many issues surrounding the defective class definition. A stay would ensure that the parties do not waste their time pursuing and defending nonexistent claims.

II. FACTUAL AND PROCEDURAL HISTORY.

Real Parties in Interest provided a skewed version of the procedural history of the district court proceedings. Notably absent from Real Parties' version was any discussion regarding their failures to comply with discovery rules which led to the denial of their Motion for Partial Summary Judgment. Real Parties further failed to detail the extensive history related to the ever-changing proposed class

definition(s). Contrary to Real Parties' assertion that the district court was dealing with the "simplest class definition ever," the district court proceedings related to the issues of the class definition and were extensive and involved lengthy hearings.

Further disingenuous is Real Parties' contention that they have not yet moved the district court to approve the class notice and have not demanded contact information for the Petitioners' employees. **Real Parties in Interest's Response to Petitioner's Motion to Stay ("Response"), p. 3.** As noted in the body of Real Parties' Motion for Approval of Class Action Notice to the Non-Enrollment class, Class Notice Plan, and Related Relief (the title clearly refutes the aforementioned contention), Real Parties requested the district court to approve its proposed class notice, to order Petitioners to produce contact information for thousands of their employees, and to order Petitioners to pay the costs related to the distribution of the class notice. ***Id.* at Exhibit 3, pp. 4-6.** Therefore, contrary to the Real Parties' contention, there has been actual demand for Petitioners' employees' contact information and a proposal for issuance of the notice. There is a clear need for the requested stay pending resolution of Petitioners' writ pertaining to Real Parties' view of "provide" and "enroll," the latter of which is included in the class definition certified by the district court judge.

III. ARGUMENT.

A. The Object of the Petition Will Be Defeated Without a Stay.

Real Parties contend that they did not move the district court for notice to be sent, but instead merely moved for approval of the form of the notice, the notice plan, and other related relief; thus, there is no need for a stay. Indeed, Real Parties specifically state in their Response that they have "no plans to ask the district court to hand over contact information or to send out class notice…" Those contentions are belied by the content of the Real Parties' motion wherein they request a district

court order directing Petitioners to produce contact information for thousands of their employees and to order Petitioners to pay the costs related to the distribution of the class notice. ***Id.* at Exhibit 3, pp. 4-6.**

If this Court denies Petitioners' request for a stay, Petitioners will be required to disseminate a potentially defective notice to thousands of its employees, many of whom will have no claim. The purpose of a correct class definition, one that does not include the erroneous replacement of the word "provide" with the word "enroll," would be defeated without a stay.

B. A Stay Supports Judicial Economy, Does Not Cause Serious Harm to Real Parties in Interest, and Avoids Potential Irreparable Harm to Petitioners.

Oddly, Real Parties indicate on one hand that they are not opposed, in principle, to an appropriate stay to allow this Court to determine the issues at hand, and yet contemporaneously insist that a stay at this time will harm them insofar as putative class members' "addresses are lost or grow stale" and because they will be unable to move forward with their purported second proposed class. **Response, pp. 3, 7.** Such concerns are neither irreparable nor serious. *See, e.g., Berryman v. Int'l Bhd. Elec. Workers,* 82 Nev. 277, 280 (1966) (with respect to perceived harm, there should be a "reasonable probability that real injury will occur if the injunction does not issue"). Moreover, there is no danger of Petitioners' current and former employees' addresses "growing stale" and Real Parties can move forward with class notice after this Court renders a decision on this writ.

In contrast, Petitioners will be irreparably harmed should this Court not grant a stay. Real Parties have already moved in the district court proceedings for approval of class notice (with a legally flawed class definition), requested contact information for over 2,000 of Petitioners' employees, and requested Petitioners' to

pay for the dissemination of class notice. Requiring Petitioners to participate in issuing a defective class notice to thousands of their former and current employees, many of whom will have no standing should this Court rule in Petitioners' favor, unreasonably interferes with Petitioners' business. *Hansen v. Eighth Judicial Dist. Court ex rel. County of Clark*, 116 Nev. 650, 658 (2000) (citing *Sobol v. Capital Management*, 102 Nev. 444, 446 (1986) (concluding, in the context of an injunction, that "acts committed without just cause which unreasonably interfere with a business or destroy its credit or profits may do an irreparable injury")).

Additionally, Petitioners consider their employees' contact information private and confidential. Requiring Petitioners to share that information with Real Parties without confirming that each and every one of those members is a definitive class member will undermine the relationship between Petitioners and their employees.

C. There is Likelihood that Petitioners' Writ Will be Successful on the Merits.

The Office of the Labor Commissioner ("OLC") filed an opening brief as *amicus curie* with the Court in NV S. Ct. case nos. 68523/68754/68770/68845. **Opening Brief of the Office of the Labor Commissioner at Declaration of Nicholas Wieczorek as Exhibit A.** The brief goes into detail about the legislative discussions associated with NAC 608.100 and NAC 608.104 and explains that the then-Labor Commissioner addressed the following question from the Senate Committee on Commerce and Labor": "What if the employee does not want health insurance?" ***Id.* at p. 8.** The Labor Commissioner explained to the Senate committee **that if an employee were to decline health insurance the employer would still meet its obligations under the amendment if it makes the insurance available**. ***Id.*** Thus, Petitioners' argument in their writ, that "provide" means

"offer" and not "enroll," will likely succeed considering the Labor Commissioner's testimony in front of the Senate committee. ***Id.***

DATED this 22nd day of December, 2015.

MORRIS POLICH & PURDY LLP

By: /s/ Nicholas M. Wieczorek

NICHOLAS M. WIECZOREK
Nevada State Bar No. 6170
DEANNA L. FORBUSH
Nevada State Bar No. 12503
JEREMY J. THOMPSON
Nevada State Bar No. 12503
500 South Rancho Drive, Suite 17
Las Vegas, Nevada 89106
Attorneys for Petitioners MDC RESTAURANTS, LLC; LAGUNA RESTAURANTS, LLC; INKA, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of December, 2015, I served a true and correct copy of **PETITIONER'S REPLY IN SUPPORT OF MOTION TO STAY** via the Court's electronic filing and service program (Document Access) to all registered counsel and/or parties as set forth below:

Don Springmeyer, Esq.
Nevada Bar No. 1021
Bradley Schrager, Esq.
Nevada Bar No. 10217
WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP
3559 E. Russell Road, Second Floor
Las Vegas, Nevada 89120-2234

Elayna J. Youchah, Esq.
Steven C. Anderson, Esq.
JACKSON LEWIS P.C.
3800 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169
Attorneys for Amici Curiae

A copy was hand delivered to the chambers of:

Honorable Timothy C. Williams
Eighth Judicial Distirct Court
Dept. XVI
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Lisa Woodruff
An Employee of MORRIS POLICH & PURDY LLP