IN THE SUPREME COURT OF THE STATE OF NEVADA

MDC RESTAURANTS, LLC, A NEVADA LIMITED LIABILITY COMPANY; LAGUNA RESTAURANTS LLC, A NEVADA LIMITED LIABLITY COMPANY; AND INKA LLC, A NEVADA LIMITED LIABILITY COMPANY,

Petitioners,

vs.

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 GAIL WILBANKS, AN INDIVIDUAL; and CHARITY FITZLAFF, AN INDIVIDUAL, ALL ON BEHALF OF THEMSELVES AND ALL SIMILARLY-SITUATED INDIVIDUALS,

Real Parties in Interest.

Case No. 68523

Eighth Judicial District Court Case No. A-14-701633-C

District Court Dept. No. 16
Honorable Timothy C. Williams

COLLINS KWAYISI, AN INDIVIDUAL, Appellant, vs. WENDY'S OF LAS VEGAS, INC., AN OHIO CORPORATION; AND CEDAR ENTERPRISES, INC., AN OHIO CORPORAITON, Respondents.	**Case No. 68754** United States District Court, District of Nevada, Case No. 2:14-cv-00729-GMN-VCF Honorable Gloria M. Navarro
THE STATE OF NEVADA, OFFICE OF THE LABOR COMMISSIONER; AND SHANNON CHAMBERS, NEVADA LABOR COMMISSIONER IN HER OFFICIAL CAPACITY Appellants, vs. CODY C. HANCOCK, AN INDIVIDUAL, Respondent.	**Case No. 68770** First Judicial District Court Case No. 14 OC 00080 1B District Court Dept. No. 2 Honorable James E. Wilson, Jr.
ERIN HANKS, Appellant, vs. BRIAD RESTAURANT GROUP, L.L.C., A NEW JERSEY LIMITED LIABILITY COMPANY, Respondent.	**Case No. 68845** United States District Court, District of Nevada, Case No. 2:14-cv-00786-GMN-PAL Honorable Gloria M. Navarro

BRIEF OF AMICUS CURIAE IN SUPPORT OF APPELLANTS THE STATE OF NEVADA, OFFICE OF THE LABOR COMMISSIONER, AND

SHANNON CHAMBERS, NEVADA LABOR COMMISSIONER IN HER OFFICIAL CAPACITY, APPEAL OF THE DISTRICT COURT ORDER INVALIDATING NAC 608.104(2)

RICK D. ROSKELLEY, ESQ., Nevada Bar # 3192
ROGER L. GRANDGENETT II, ESQ., Nevada Bar # 6323
MONTGOMERY Y. PAEK, ESQ., Nevada Bar # 10176
KATHRYN B. BLAKEY, ESQ., Nevada Bar # 12701
LITTLER MENDELSON, P.C.
3960 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169-5937
Telephone: 702.862.8800
Facsimile: 702.862.8811
Attorneys for Amicus Curiae Briad Restaurant Group, L.L.C.

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Briad Restaurant Group, L.L.C. is a privately-held company and no publically traded company owns 10% or more of Briad Restaurant Group, L.L.C.'s stock. There are no other known interested parties other than those participating in this case.

Dated: December 22, 2015

Respectfully submitted,

/s/ Kathryn B. Blakey, Esq.

RICK D. ROSKELLEY, ESQ.
ROGER L. GRANDGENETT II, ESQ.
MONTGOMERY Y. PAEK, ESQ.
KATHRYN B. BLAKEY, ESQ.
LITTLER MENDELSON, P.C.

Attorneys for Amicus Curiae Briad Restaurant Group, L.L.C.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

OTHER AUTHORITIES

I. ISSUE DECIDED AND PRESENTED

Whether the District Court erred, abused its discretion and/or acted in a capricious manner by invalidating NAC 608.104(2) which states that employers shall include "tips" to determine "10% of the employee's gross taxable income from the employer" under the Minimum Wage Amendment, Nev. Const. art. 15, § 16 (the "MWA").

II. INTEREST OF THE AMICUS CURIAE

Pursuant to NRAP 29(a), Briad Restaurant Group, L.L.C. ("Briad" or "Amicus Curiae") seeks to participate as Amicus Curiae in the appeal proceeding in *The State of Nevada, Office of the Labor Commissioner and Shannon Chambers, Nevada Labor Commission v. Cody C. Hancock,* Case No. 68770, on the issue of whether NAC 608.104(2) is invalid due to its language that employers may count tips as part of an employee's gross taxable income for purpose of calculating the cost of health insurance premiums under the MWA. Pursuant to NRAP 29(c), Briad's Motion for Leave has been filed concurrently with this brief.

In addition to being a Respondent in the consolidated NRAP 5 question regarding the meaning of "provide" under the MWA, Briad also has an issue in the inclusion of "tips" under NAC 608.104(2) because it pays some of its employees the minimum wage plus tips. Relying on the MWA and NAC 608.104(2), Briad has counted tips as part of an employee's gross taxable income for purpose of

calculating the cost of health insurance premiums under the MWA. As such, Briad has an interest in this matter.

III. INTRODUCTION

NAC 608.104(2)'s inclusion of tips in an employee's gross taxable income from the employer is entirely consistent with the plain language and purpose of the MWA. Indeed, excluding tips from an employee's gross taxable income from the employer would render portions of the MWA meaningless, require re-defining "gross taxable income," directly contradict controlling state and instructive federal law, and create a truly unworkable and nonsensical system wherein all tips would be re-categorized as outside an employer's distribution and allocation.

Nevertheless, the district court below, relying on no authority whatsoever, invalidated NAC 608.104(2) due to an entirely incorrect and misguided understanding of how tips are actually collected and paid to employees. Specifically, the district court assumed that tips are earned at an employer's place of business are solely transferred from customers to employees with no involvement by the employer whatsoever. Thus, the district court held that tips are income "from the customer" and not "from the employer" and must be excluded from an employee's gross taxable income from the employer. The district court's finding, however, does not reflect how tips are actually processed before becoming an employee's "income." Employers must first collect and account for tips earned

on their premises, allocate those tips into payroll, deduct the appropriate payroll taxes, and then distribute those tips to the appropriate employees. Such tip distribution can include employees who never received the tips from customers at all – *i.e.* back-of-the-house employees, bussers, bartenders, etc. Indeed, the employer's distribution of tips, outside of its own revenue stream, controls how much an employee makes in tips rather than each individual employee's collection of each individual customer's tip to them. Thus, the fact that the money originated with a customer is irrelevant. All compensation paid to employees originates with a customer or some other source at some point. That does not mean that each individual restaurant customer files a W2 statement for each server that customer has tipped at a meal. As such, this Court should reject the district court's invalidation of NAC 608.104(2) as inconsistent with the MWA.

IV. FACTUAL BACKGROUND

Briad adopts the Statement of Facts and Procedure set forth in Appellants the State of Nevada, the Office of the Labor Commissioner, and Shannon Chambers', Nevada Labor Commissioner in her Official Capacity, Opening Brief.

V. ARGUMENT

The Court should reject the district court's order and find that NAC 608.104(2) is valid for three reasons: (1) the plain-language of the MWA includes tips from an employee's gross tax income from the employer; (2) Nevada and

federal law include tips from an employee's gross tax income from the employer; and (3) excluding tips from an employee's gross tax income from the employer would create impractical results.

A. The Plain Language of the MWA Includes Tips in an Employee's Gross Taxable Income

When the words of a statute have a definite and ordinary meaning, the court should not look beyond "the plain language of the statute, unless it is clear that this meaning was not intended." *Harris Associates v. Clark Cnty. Sch. Dist*., 119 Nev. 638, 641-42, 81 P.3d 532, 534 (2003) (*citing State v. Quinn*, 117 Nev. 709, 713, 30 P.3d 1117, 1120 (2001)); *see also Glover v. Concerned Citizens for Fuji Park*, 118 Nev. 488 (2002) (stating that "[i]t is well established that when the language of a statute is unambiguous, a court should give that language its ordinary meaning"), *overruled in part by Garvin v. Dist. Ct.*, 118 Nev. 749 (2002).

Here, the MWA uses very definite and ordinary language regarding the maximum amount an employee may pay in health insurance premiums for the health insurance offered by his or her employer. The MWA states that the cost must be "not more than 10 percent of the employee's gross taxable income from the employer." Nev. Const. art. 15, § 16(A) (emphasis added). Thus, when calculating how much an employee may pay for his or her health insurance, employers must look to the "gross taxable income" the employee receives from that employer. This includes tips because tips earned at an employer are taxed as

income from that employer. ***See i.e.*** **IRS Publication 531 Reporting Tip Income**, (Amicus Curiae Appx. at Vol. I, 001-010) ("All tips [employees] receive are subject to federal income tax."). Therefore, there is no basis whatsoever for excluding tips from an employee's "gross taxable income from the employer."

The district court, on the other hand, determined that tips must be excluded the 10% of gross taxable income because "gross taxable income from the employer" must mean: gross taxable income minus tips. ***See*** **Hancock District Court Order at 5:16; 6:10-22**. The legislature, however, did not say "gross taxable income minus tips." Alternatively, had the legislature wanted to distinguish and separate "tips", the legislature could have used the term "wages from the employer" rather than "gross taxable income from the employer." This would be consistent with the IRS's W2 form use of "Wages, tips, other compensation" as separate components of an employee's income from one employer. This was not the case, however, and the district court's holding is not supported by the plain language of the MWA.

Further, the plain language of the MWA distinguishes that tips *are* a part of an employee's gross taxable income from the employer. Specifically, the MWA states that "tips or gratuities received by employees shall not be credited as being any part of or offset against the wage rates required by this section." Nev. Const. art. 15, § 16(A). This latter use of the term "tips" shows that the legislature could

have defined the 10% requirement as "gross taxable income minus tips" had it wanted to. Instead, the language of the MWA clearly shows that when the legislature wanted "tips" to be excluded from a calculation as it did later for "wage rates", it expressly stated as much.

This is further evident by the fact that the MWA is very specific when describing the different categories of pay an employee receives. For example, as discussed above, it clearly sets forth that tips cannot be used to offset *wage rates*. It then uses an entirely different term to describe the pay used for calculating insurance premium costs. It specifically states "gross taxable income" which, as discussed above, includes tips. It is a basic rule of construction that "[w]here the document has used one term in one place, and a materially different term in another, the presumption is that the different term denotes a different idea." *Lorton v. Jones*, 130 Nev. Adv. Op. 8, 322 P.3d 1051, 1057 (2014), reh'g denied (Mar. 5, 2014) (quoting Antonin Scalia and Bryan A. Garner, Reading Law: The Interpretation of Legal Texts (2012)). Accordingly, if the MWA intended for insurance premiums to be based exclusively off of an employee's wage rates, as the district court suggests, it would have referenced wage rates as opposed to "gross taxable income from the employer."

B. State and Federal Law Include Tips in an Employee's Gross Taxable Income from His or Her Employer

In addition to the plain language of the MWA, state and federal law are also abundantly clear that tips are included in an employee's gross taxable income from the employer.

1. Nevada Law is Clear that Tips is Income from Employers

The state of Nevada has two statutes that regulate tip income. First, there is the MWA which, as explained above, includes tips in an employee's gross taxable income from the employer; and second, there is NRS 608.160 which also contemplates that it is the employer who bestows tips on employees. Specifically, as the court in *Moen v. Las Vegas Int'l Hotel, Inc*, explained, NRS 608.160 "indicates that a tip or gratuity need not be considered a personal donation to the employee receiving it." 402 F. Supp. 157, 160 (D. Nev. 1975) aff'd, 554 F.2d 1069 (9th Cir. 1977) (emphasis added); *see also Cotter v. Desert Palace, Inc*., 880 F.2d 1142, 1146 (9th Cir. 1989). Rather, in *Moen*, when the plaintiff attempted to assert that the money he received in tips was his personal income, the court held that, "Plaintiff's argument, which has to be predicated upon the contention that the tip handed to him becomes his personal property under NRS Sec. 608.160, is ridiculous." *Moen*, 402 F. Supp. at 160. "There is no reason to suppose that the last person in a service line is the only one entitled to share in the customer's

bounty. For example, a busboy as well as a waitress contributes to the good service and well-being of a customer in a restaurant." *Id*.

Thus, in the state of Nevada, when a customer leaves a tip or gratuity she is not paying a side-income to the employee to whom she hands the tip or gratuity. *Alford v. Harolds Club*, 99 Nev. 670, 673, 669 P.2d 721, 723 (1983) (adopting reasoning in *Moen v. Las Vegas Int'l Hotel, Inc.*, 402 F. Supp. 157, 160 (D. Nev. 1975) aff'd, 554 F.2d 1069 (9th Cir. 1977)); *see also Cotter v. Desert Palace, Inc*., 880 F.2d 1142, 1146 (9th Cir. 1989). Rather, the customer is giving money as an award for service with the expectation that the employer will then allocate that money to the appropriate employees who contributed to his or her service even though it may not reflect the exact amount that each employee actually received. *Id*. What also makes tip money left by customers unique from other payments is that employers must distribute all of the money collected in tips to their employees' income and they may not keep any of that money into their own revenue as is the case with other money collected from customers. *Id*. Therefore, the employee receives tips from the employer when it is distributed into an employee's income. *Id*

The Nevada Supreme Court adopted this exact position in *Alford v. Harolds Club* after agreeing with the extensive review of the legislative history of NRS 608.160 and prior related legislation conducted by the Federal District of Nevada

in *Moen*. *Alford*, 99 Nev. at 673 (adopting reasoning in *Moen*, 402 F. Supp. 157). In *Alford v. Harolds Club*, at issue was whether casino dealers were entitled to keep the tips handed to them by customers or whether their employer, Harolds Club, was permitted to distribute collected tips evenly amongst all dealers who worked the same shift. *Alford v. Harolds Club*, 99 Nev. 670, 673, 669 P.2d 721, 723 (1983). As this Court explained, when an employee keeps the tips handed to him by a customer, it is because his employer has allowed him to do so: "Harolds Club allowed its casino dealers to keep tips or gratuities awarded them individually by customers." *Id*. (emphasis added). Thus, when an employee's tips are the amount handed to him by a customer, it is because the employer has released to the employee those tips. It is still income from the employer.

Similarly, in *Wynn Las Vegas, L.L.C. v. Baldonado*, this Court found that the Wynn's tip-pooling policy was permissible because "the Wynn distributes the tips among its employees, keeping none for itself." *Wynn Las Vegas, L.L.C. v. Baldonado*, 129 Nev. Adv. Op. 78, 311 P.3d 1179, 1180 (2013) *appeal dismissed sub nom. Baldonado v. Wynn Las Vegas*, LLC, No. 60934, 2013 WL 7158906 (Nev. Dec. 23, 2013). (emphasis added). Thus, this Court expressly acknowledged that it was the Wynn – not the customers – that was distributing the income to its employees. *Id*.

Indeed, the rulings in both *Alford* and *Baldonado* make a finding that tips are income "from the customer," impossible. For if tips were income from customers, then employers would have no more of a right to require employees to share tips with one another than they have the right to require employees to share base-wages with one another. Once an employee receives their income, it is theirs to keep. Thus, employees do not receive their tips until it is allocated to them from their employer.

This is further recognized Nevada's unemployment insurance. In Nevada, tips must be reported as wages paid to employees from the employer because tips are included in a claimant's earnings when determining if he or she is entitled to benefits and in what amounts. ***See*** **Nevada Department of Employment Training and Rehabilitation Employer Handbook re Nevada Unemployment Compensation Program at 30-31, 62** (Amicus Curiae Appx. at Vol. I, 011-016); and **Nevada Unemployment Insurance Frequently Asked Questions at 8, 14** (Amicus Curiae Appx. at Vol. I, 017-019). Indeed, Nevada employers are the sole contributors to unemployment insurance and they make their payments based on both the wages and tips they pay their employees. *Id*.

Accordingly, it is clear that in the state of Nevada tips are included in an employee's gross taxable income from the employer.

2. Federal Law is Clear that Tips is Income from Employers

The Federal Government also recognizes that tips are income from employers. ***See* IRS Publication 17 (2014), Your Federal Income Tax; Part One § 4 "Tax Withholding and Estimated Tax – Tax Withholding for 2015: Tips" and Part Two §6 Tip Income – Introduction** (Amicus Curiae Appx. at Vol. I, 020-035). Specifically, the Internal Revenue Service ("IRS") defines tips as part of an employee's pay – paid by the employer – subject to federal income tax. *Id*. As such, it requires employers and employees alike to fill out their tax documentation accordingly. For example, the 2015 General Instructions for Forms W-2 and W-3 instructs employers that when filling out "Box 1" for wages, tips, and other compensation on their employees W-2 forms, they must, "[s]how the total taxable wages, tips, and other compensation <u>that you paid your employee</u> during the year." **2015 General Instructions for Forms W-2 and W-3** (emphasis added) (Amicus Curiae Appx. at Vol. I, 036-042). Therefore, tips are specifically defined as compensation that the employer pays to the employee. The instructions go on to affirm that the compensation employers pay their employees includes the "[t]otal tips reported by the employee to the employer." *Id*. Further, employees are instructed that when reporting their gross incomes to the IRS, they must include "tips paid to [them] by [their] employer." **IRS Publication 531, Reporting Tip Income for use in preparing 2014 Returns** (Amicus Curiae

Appx. at Vol. I, 001-010). Thus, like Nevada law, there is no ambiguity whatsoever under federal law that tips is in fact compensation from employers.

Nevertheless, the district court below determined that because employers are aware of what portion of an employee's income is derived from tips and what portion is derived from base-wages, as evidenced by the separate reporting requirements on an employee's W-2, tips must not be "from the employer" – even though it is reported on the employer-issued W-2 form. **Hancock District Court Order at 5:12-18**. The extent of the district court's reasoning is that because "[t]here are no particular difficulties" in determining what income is from wages and what income is from tips, tips can easily be separated out as income *not* from the employer. *Id*. The errors in this reasoning or lack thereof are obvious. First, as explained above, both base-wages and tips are included in "Box 1" as part of an employee's gross taxable income. **2015 General Instructions for Forms W-2 and W-3** (emphasis added) (Amicus Curiae Appx. at Vol. I, 036-042). Second, the sole purpose of the W-2 form is to inform the IRS how much compensation the employee received *from the employer* during the calendar year. (Amicus Curiae Appx. at Vol. I, 036-042). To assume that tips are not income from the employer on the sole basis that they are tracked separately from base-wages is nonsensical.

This is further evidenced by that fact that when an employee does receive income from a source that is not the employer, the IRS specifically requires that

income to be reported on a separate form from the employer-issued W-2. *See Id.* (discussing Form 8922, Third Party Sick Pay Recap). For example, when an employee's sick pay is paid by a third-party payer, the third-party payer is required to report that income on an entirely separate form - Form 8922. *Id*. Thus, if tips were in fact income from a third-party customer, it would stand to reason that the customer too would have to report that income to the IRS on a separate form. This is of course not the case, because tips are a form of compensation from employers.

C. Excluding Tips from an Employee's Gross Taxable Income from the Employer Would Create Impractical Results

The reason the plain language or the MWA and state and federal law all consider tips to be income from the employer is obvious: the alternative creates impractical results. This is because there are a variety of different forms and types of tips that make the district court's oversimplified "from the customer" definition unworkable.

First, there are "allocated tips" which are tips paid to employees who work in establishments like restaurants, cocktail lounges or similar businesses that report tips in an amount less than 8% of food and drink sales. **IRS Publication 531, Reporting Tip Income for use in preparing 2014 Returns** (Amicus Curiae Appx. at Vol. I, 001-010); and **2015 General Instructions for Forms W-2 and W-3** (emphasis added) (Amicus Curiae Appx. at Vol. I, 036-42). These tips are paid to employees directly out of an employer's revenue stream. *Id*. Specifically,

when the employer's customers do not leave gratuities equivalent to at least 8% of the businesses' food and drink sales, the employer must calculate "allocated tips" for its employees based on either an employer-employee agreement or a method under IRS regulations based on an employee's sales and hours worked, and pay its employees such allocated tips from its revenue in addition to the employees' base-wages. *Id*.

Next, there are "charged tips" which are tips collected directly by the employer from customers' debit and credit card charges and then paid by the employer to employees. Indeed, the IRS specifically explains to employees that their gross incomes include "charged tips paid to you by your employer" and "[t]ips from credit and debit card charge customers [sic] that your employer pays you." **IRS Publication 531, Reporting Tip Income for use in preparing 2014 Returns** (Amicus Curiae Appx. at Vol. I, 001-010).

Finally, employees who receive tips under tip sharing agreements may never interact with the customer of all. *See i.e. Moen*, 402 F. Supp. at 160; *Alford*, 99 Nev. at 673; *Baldonado*, 129 Nev. Adv. Op. at 311. Such employees have no way of obtaining tips from the customer without the direct allocation by the employer.

In addition to these tip variations that show the wisdom of the IRS' characterization of tips as income from the employer, a contrary application would also create a new rule of law as employers have relied on NAC 608.104 for nearly

a decade. This reliance on existing tax law and the Labor Commissioner regulations would require that any invalidation of NAC 608.104(2) be solely prospective. *See Breithaupt v. USAA Prop. & Cas. Ins. Co.*, 110 Nev. 31, 35, 867 P.2d 402,405 (1994) (*citing Chevron Oil Co. v. Huson*, 404 U.S. 97, 106-07 (1971)). Accordingly, the tips "from the customer" decision is impractical to apply as well as being contrary to existing law.

VI. CONCLUSION

The district court's invalidation of NAC 608.104(2) has no basis in law or reality. Tips are included in an employee's gross taxable income under every controlling and persuasive authority that exists. Accordingly, this Court should find that NAC 608.104(2) is a valid regulation.

Dated: December 22, 2015

Respectfully submitted,

/s/ Kathryn B. Blakey, Esq.

RICK D. ROSKELLEY, ESQ.
ROGER L. GRANDGENETT II, ESQ.
MONTGOMERY Y. PAEK, ESQ.
KATHRYN B. BLAKEY, ESQ.
LITTLER MENDELSON, P.C.

Attorneys for Amicus Curiae Briad Restaurant Group, L.L.C.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

☒ This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 point font size and Times New Roman.

I further certify that this brief complies with the page or type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☐ Proportionately spaced, has a typeface of 14 points or more, and contains _____ words:

☐ Monospaced, has 10.5 or fewer characters per inch, and contains ___words or ___lines of text; or

☒ Does not exceed 15 pages.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief

regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated: December 22, 2015

Respectfully submitted,

/s/ Kathryn B. Blakey, Esq.

RICK D. ROSKELLEY, ESQ.
ROGER L. GRANDGENETT II, ESQ.
MONTGOMERY Y. PAEK, ESQ.
KATHRYN B. BLAKEY, ESQ.
LITTLER MENDELSON, P.C.
3960 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169-5937
Attorneys for Amicus Curiae Briad Restaurant Group, L.L.C.

CERTIFICATE OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 3960 Howard Hughes Parkway, Suite 300, Las Vegas, Nevada 89109-0920. On December 22, 2015, the following document was served on the following:

BRIEF OF AMICUS CURIAE IN SUPPORT OF APPELLANTS THE STATE OF NEVADA, OFFICE OF THE LABOR COMMISSIONER, AND SHANNON CHAMBERS, NEVADA LABOR COMMISSIONER IN HER OFFICIAL CAPACITY, APPEAL OF THE DISTRICT COURT ORDER INVALIDATING NAC 608.104(2)

☒ By **CM/ECF Filing** – Pursuant to N.E.F.R. the above-referenced document was electronically filed and served upon the parties listed below through the Court's Case Management and Electronic Case Filing (CM/ECF) system.

☒ By **United States Mail** – a true copy of the document listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Las Vegas, Nevada addressed as set forth below.

Scott Davis, Esq.
Deputy Attorney General
Adam Paul Laxalt, Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, NV 89101
Attorneys for State of Nevada ex rel Office of the Labor Commissioner; and Shannon Chambers

Elayna J. Youchah
Steven C. Anderson, Esq.
Jackson Lewis P.C.
3800 Howard Hughes Parkway
Suite 600
Las Vegas, NV 89169
Attorneys for Amici Curiae

Honorable James E. Wilson
First Judicial District Court
Department 2
885 E. Musser Street, Suite 3031
Carson City, NV 89701

Honorable Timothy C. Williams
Eighth Judicial District Court,
Department 16
200 Lewis Avenue
Las Vegas, NV 89155

Don Springmeyer, Esq.
Bradley Schrager, Esq.
Daniel Bravo, Esq.
Wolf, Rifkin, Shapiro, Schulman & Rabkin
3556 E. Russell Road, 2nd Floor
Las Vegas, NV 89120-2234
Attorneys for Respondent

Honorable Gloria M. Navarro
United States District Court
District of Nevada
333 S. Las Vegas Blvd.
Las Vegas, NV 89101

I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in an overnight delivery service pick-up box or office on the same day with postage or fees thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 22, 2015, at Las Vegas, Nevada.

/s/ Debra Perkins

Firmwide:137659722.1 058582.1012