

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; 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

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Dec 23 2015 08:44 a.m.
Eighth Judicial District Court Case
No. A-14-701633-0
Tracie K. Lindeman
Clerk of Supreme Court

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
CORPORATION,

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

**RESPONDENT BRIAD RESTAURANT GROUP, L.L.C.'S MOTION FOR
LEAVE TO FILE AMICUS CURIAE BRIEF 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 N.A.C. 608.104(2)**

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Comes now, BRIAD RESTAURANT GROUP, L.L.C. (“Briad”), by and through its undersigned attorneys, Littler Mendelson, P.C., hereby respectfully files this motion for leave to participate as *amici curiae* in the above-captioned matter pursuant to Nev. R. App. P. 29(c).

I. Briad’s Interest in Filing an Amicus Brief

Briad 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 (“*Hancock*”), on the issue of whether NAC 608.104(2) is invalid due to its direction to employers that they may count tips as part of an employee’s gross taxable income for purpose of calculating the cost of health insurance premiums under the Minimum Wage Amendment, Nevada Const. art. 15, § 16 (the “MWA”). This Court has consolidated the *Hancock* matter with Briad’s Petition for Writ of Mandamus or Prohibition on the meaning of the term “provide” under the MWA. In addition to Briad’s interest on the meaning of “provide”, Briad now seeks to also present its arguments in support of the validity of NAC 608.104(2) regarding the inclusion of tips as part of gross taxable income under the MWA.

Briad’s interest in this issue regarding the validity of NAC 608.104(2) is due to it owning and operating a business in the state of Nevada wherein it pays some of its employees the minimum wage pursuant to the MWA plus tips. Additionally,

within the last year, Briad has been served with a lawsuit for alleged violations of the MWA. *Hanks et al. v. Briad Restaurant Group, L.L.C.*, D. Nev., Case No. 2:14-cv-00786-GMN-PAL, filed May 19, 2014. In that lawsuit, plaintiffs have asserted that the tip-income they received as part of their compensation from Briad cannot be calculated into their gross taxable income when determining the premium cost of the health insurance made available to them from Briad. Briad has taken the opposite position and, relying in part on N.A.C. 608.104(2), has factored in the tip-income it gives its employees as part of their gross taxable income when calculating the premium cost of the health insurance it makes available to its employees pursuant to the MWA. Thus, the validity of N.A.C. 608.104(2) directly implicates Briad's business practices, its compliance with the MWA, and its potential liability in the above referenced lawsuit, *Hanks et al. v. Briad Restaurant Group, L.L.C.*, D. Nev., Case No. 2:14-cv-00786-GMN-PAL.

As such, it is Briad's position that the District Court erred in invalidating N.A.C. 608.104(2). Therefore, Briad has a direct interest in the issue at hand and setting forth its arguments that support of Appellants the State of Nevada, the Office of the Labor Commissioner, and Shannon Chambers', Nevada Labor Commissioner in her Official Capacity, position that N.A.C. 608.104(2) is a valid regulation which implements and does not conflict with the MWA.

II. Reasons Why Briad's Amicus Brief is Desirable

The ability for an amicus to file a brief is within this Court's discretion. *See* Nev. R. App. P. 29(a) and 21(b)(3). “Amicus curiae presentations assist the court by broadening its perspective on the issues raised by the parties. Among other services, they facilitate informed judicial consideration of a wide variety of information and points of view that may bear on important legal questions.” *Bily v. Arthur Young & Co.*, 3 Cal. 4th 370, 406 n.14, 834 P.2d 745 (1992). Courts “frequently welcome amicus briefs from non-parties concerning legal issues that have potential ramifications beyond the parties directly involved or if the amicus has ‘unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.’” *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005) (citations omitted).

Here, Briad's Amicus Brief presents additional points and authorities as to why tips are in fact, income “from the employer” contrary to the district court's baseless assumption to the contrary. In its Amicus Brief, Briad cites Nevada and federal law including binding and persuasive authority on the disbursement, payment, taxing and calculation of tips. Indeed, the vast majority of the authority set forth in Briad's proposed *amicus curiae* brief filed concurrently herein has not been addressed by the other parties or the proposed *amici curiae*. Thus, Briad

presents additional considerations that will give the Court a more complete understanding of the applicable law. Moreover, Briad will set forth additional practical considerations that relate to this issue and are directly relevant to the policy considerations that this Court may weigh in answering the question of law presented before it.

II. Conclusion

Briad has a strong interest in participating as Amicus Curiae on this issue and its briefing will be both useful and timely given the importance of the petitioned issue. Accordingly, this Court should grant the Motion for Leave and accept Briad's Amicus Curiae Brief on the issue of tips filed concurrently herewith.

Dated: December 22, 2015

/s/ Kathryn B. Blakey, Esq.
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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 10 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.

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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, 89169. On December 22, 2015, I served the within document:

RESPONDENT BRIAD RESTAURANT GROUP, L.L.C.’S MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF 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 N.A.C. 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.

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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