

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 MDC RESTAURANTS, LLC;
3 LAGUNA RESTAURANTS, LLC;
4 AND INKA, LLC,

5 Petitioners,

6 vs.

7 THE EIGHTH JUDICIAL
8 DISTRICT COURT OF THE STATE
9 OF NEVADA, IN AND FOR THE
10 COUNTY OF CLARK, AND THE
11 HONORABLE TIMOTHY C.
12 WILLIAMS, DISTRICT JUDGE,

13 Respondents,

14 and

15 PAULETTE DIAZ; LAWANDA
16 GAIL WILBANKS; SHANNON
17 OLSZYNSKI; AND CHARITY
18 FITZLAFF, ALL ON BEHALF OF
19 THEMSELVES AND ALL
20 SIMILARLY-SITUATED
21 INDIVIDUALS,

22 Real Party in Interest.

Supreme Court Case No. 71289
District Court Case No. A-14-701633-C

Electronically Filed
Oct 20 2016 01:27 p.m.
**CONSENT TO PARTICIPATE AS
AMICI CURIAE AND REQUEST
FOR INVITATION TO OF Supreme Court
PARTICIPATE AS AMICI CURIAE**

23 **CONSENT TO PARTICIPATE AS AMICI CURIAE AND REQUEST FOR**
24 **INVITATION TO PARTICIPATE AS AMICI CURIAE**

25 Comes now, BRIAD RESTAURANT GROUP, L.L.C., WENDY’S OF LAS
26 VEGAS, INC., CEDAR ENTERPRISES, INC., and TERRIBLE HERBST, INC., by
27 and through their undersigned attorneys, Littler Mendelson, P.C., hereby respectfully
28 file this request for an invitation to participate as amici curiae in the above-captioned
29 matter pursuant to Nev. R. App. Proc. 29(a) and Nev. R. App. Proc. 21(b)(3).

30 **I. Consent of All Parties Pursuant to Nev. R. App. Proc. 29(a)**

31 Pursuant to Nev. R. App. Proc. 29(a), amici curiae may file a brief “if
32 accompanied by written consent of all parties.” Attached hereto as **Exhibit A** is the
33 written consent of Petitioners, Respondents, and the Real Party in Interest.

1 Accordingly, proposed amici curiae respectfully submit that amici curiae briefing is
2 permissible.

3 **II. Request for Invitation Pursuant to Nev. R. App. P. 21(b)(3)**

4 The issue raised by Petitioners' Writ – the standard for qualified health benefits
5 pursuant to Section 16 of Article XV of the Nevada Constitution – raises an important
6 legal issue that implicates the public interest. Moreover, the issue raised is novel and
7 pertains to specialized areas of law. For these reasons, proposed amici curiae
8 respectfully submit that amici curiae briefing is desirable as it may assist this Court
9 with resolution of the issues raised by the Petitioners' above-captioned matter.

10 The specific interests of the proposed amici curiae, BRIAD RESTAURANT
11 GROUP, L.L.C., WENDY'S OF LAS VEGAS, INC., CEDAR ENTERPRISES,
12 INC., and TERRIBLE HERBST, INC., are the same. Each of the proposed amici
13 curiae own or operate businesses in the state of Nevada and pay at least some of their
14 employees the minimum wage pursuant to Section 16 of Article XV of the Nevada
15 Constitution. Additionally, within the last year, each of the proposed amici curiae
16 have been served with lawsuits for alleged violations of Section 16 of Article XV of
17 the Nevada Constitution. Pending in those cases are motions regarding meaning of
18 qualified health benefits. Those cases and motions are as follows:

- 19 • *Tyus et al. v. Wendy's of Las Vegas, Inc. et al.*, D. Nev., Case No. 2:14-
20 cv-00729-GMN-VCF, filed May 9, 2014. (Defendants' Motion for
Summary Judgment, filed May 14, 2015).
- 21 • *Hanks et al. v. Briad Restaurant Group, LLC*, D. Nev., Case No. 2:14-cv-
22 00786-GMN-PAL, filed May 19, 2014. (Defendant's Motion for
Summary Judgment, filed August 20, 2015).
- 23 • *Ringo v. Terrible Herbst Inc. d/b/a/ Terrible Herbst*, Eighth Judicial
24 District Court, Case No. A-14-704428-C, filed July 25, 2014
(Defendant's Motion for Summary Judgment, filed August 4, 2015)

25 Thus, the standard for qualified health benefits pursuant to Section 16 of Article XV
26 of the Nevada Constitution directly implicates each of the amici curiae's potential
27 liability. Further, it is the position of the Amici Curiae that the standard for qualified
28

1 health benefits pursuant to section 16 of article XV directly implicates important
2 discovery obligations and business practices relating to record retention.

3 These interests qualify proposed amici curiae to participate in this case.
4 Additionally, as explained above, amicus briefing may be beneficial given the
5 importance of the issue raised by Petitioners' Writ. For all these reasons, proposed
6 amici curiae respectfully request an invitation to participate as amici curiae and file a
7 joint amicus brief in this matter. Furthermore, proposed amici curiae request that
8 Petitioners be granted the opportunity to respond, should the court grant the instant
9 request.

10 October 20, 2016

11 Respectfully submitted,

12
13 /s/ Montgomery Y. Paek, Esq.
14 RICK D. ROSKELLEY, ESQ.
15 ROGER L. GRANDGENETT, ESQ.
16 MONTGOMERY Y. PAEK, ESQ.
17 KATHRYN B. BLAKEY, ESQ.
18 LITTLER MENDELSON, P.C.

19 *Attorneys for Proposed Amici Curiae*
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CONSENT TO PARTICIPATE AS AMICI CURIAE AND REQUEST FOR INVITATION TO PARTICIPATE AS AMICI CURIAE

I declare under penalty of perjury that the foregoing is true and correct.
Executed on October 20, 2016, at Las Vegas, Nevada.

/s/ Erin J. Melwak
Erin J. Melwak

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EXHIBIT A

1 **CONSENT TO PARTICIPATION OF PROPOSED AMICI CURIAE**

2 Pursuant to Nev. R. App. Proc. 29(a), amici curiae may file a brief “if
3 accompanied by written consent of all parties.” The below listed parties hereby
4 consent to proposed amici curiae BRIAD RESTAURANT GROUP, L.L.C., CEDAR
5 ENTERPRISES, INC., WENDY’S OF LAS VEGAS, INC., and TERRIBLE
6 HERBST, INC., by and through their undersigned attorneys, Littler Mendelson, P.C.,
7 participation as amici curiae:

- 8 • PETITIONERS: MDC RESTAURANTS, LLC; LAGUNA RESTAURANTS,
9 LLC; AND INKA, LLC;
10 • RESPONDENTS: THE EIGHTH JUDICIAL DISTRICT COURT OF THE
11 STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE
12 HONORABLE TIMOTHY C. WILLIAMS, DISTRICT JUDGE;
13 • REAL PARTY IN INTEREST: PAULETTE DIAZ; LAWANDA GAIL
14 WILBANKS; SHANNON OLSZYNSKI; AND CHARITY FITZLAFF, ALL
15 ON BEHALF OF THEMSELVES AND ALL SIMILARLY-SITUATED
16 INDIVIDUALS,

17 Dated: October 20, 2016

18 /s/ Jeremy J. Thompson, Esq.
19 Nicholas W. Wieczorek, Esq.
20 Deanna L. Forbush, Esq.
21 Jeremy J. Thompson, Esq.
22 Morris Polich & Purdy LLP
23 3800 Howard Hughes Parkway, Suite 500
24 Las Vegas, NV 89169
25 Attorneys for Petitioner

26 Dated: October 20, 2016

27 /s/ Bradley Schrager, Esq.
28 Don Springmeyer, Esq.
29 Bradley Schrager, Esq.
30 Daniel Bravo, Esq.
31 Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
32 3556 E. Russell Road, 2nd Floor
33 Las Vegas, NV 89120-2234
34 Attorneys for Real Party in Interest
35 Firmwide:143457920.1 036579.1021