

EXHIBIT C

EXHIBIT C

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

MDC RESTAURANTS, LLC;  
LAGUNA RESTAURANTS, LLC;  
AND INKA, LLC,

Petitioners,

vs.

THE EIGHTH JUDICIAL  
DISTRICT COURT OF THE STATE  
OF NEVADA, IN AND FOR THE  
COUNTY OF CLARK, AND THE  
HONORABLE TIMOTHY C.  
WILLIAMS, DISTRICT JUDGE,

Respondents,

and

PAULETTE DIAZ; LAWANDA  
GAIL WILBANKS; SHANNON  
OLSZYNSKI; AND CHARITY  
FITZLAFF, ALL ON BEHALF OF  
THEMSELVES AND ALL  
SIMILARLY-SITUATED  
INDIVIDUALS,

Real Party in Interest.

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

**DECLARATION OF KATHRYN B.  
BLAKEY IN SUPPORT OF  
AMICUS CURIAE BRIAD  
RESTAURANT GROUP, L.L.C.,  
WENDY'S OF LAS VEGAS, INC.,  
CEDAR ENTERPRISES, INC., AND  
TERRIBLE HERBST, INC.'S  
NOTICE RE: REAL PARTIES IN  
INTEREST'S REQUEST FOR  
EXPEDITED TREATMENT**

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  
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*Attorneys for Amici Curiae Briad Restaurant Group, L.L.C., Wendy's of Las  
Vegas, Inc., Cedar Enterprises, Inc., and Terrible Herbst, Inc.*

I, Kathryn B. Blakey, Esq., hereby declare and state:

1. I am an attorney duly licensed to practice in the District of Nevada and am counsel of record for defendants in this action. I have personal knowledge of the facts set forth below and if called upon to testify, I could and would competently testify thereto.

2. I am an associate with the law firm of Littler Mendelson, which firm represents the Defendants in the above captioned matter.

3. On January 10, 2017, Defense counsel sent the Stipulation and Proposed Order for Dismissal, via Nationwide Legal, to Department 32, for Judge Rob Bare's signature. On January 23, 2017, my office called chambers for a status of the Stipulation and was informed that the department is backed logged with orders and that it should be signed and returned to us by the end of the week.

I hereby declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

January 24, 2017

Respectfully submitted,

/s/ Kathryn B. Blakey, Esq.

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

*Attorneys for Proposed Amici Curiae*

EXHIBIT B

EXHIBIT B

1 DON SPRINGMEYER, ESQ.  
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2 BRADLEY SCHRAGER, ESQ.  
Nevada State Bar No. 10217  
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8 *Attorneys for Plaintiffs*

9  
10 **UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

11 ERIN HANKS; JEFFREY ANDERSON;  
12 ROBERT BAKER; all on behalf of  
themselves and all similarly-situated  
13 individuals,

14 Plaintiffs,

15 vs.

16 BRIAD RESTAURANT GROUP, LLC., a  
New Jersey limited liability company; and  
17 DOES 1 through 100, Inclusive,

18 Defendants.

**Case No: 2:14-cv-00786-GMN-PAL**

**JOINT MOTION FOR  
CERTIFICATION OF QUESTION OF  
LAW TO THE NEVADA SUPREME  
COURT AND FOR STAY AND  
PROPOSED ORDER**

19 This is Plaintiffs' and Defendant's joint motion for certification of question of law to the  
20 Nevada Supreme Court under Nevada Rule of Appellate Procedure 5 ("NRAP 5").

21 On September 15, 2015 [ECF No. 119], this Court certified to the Nevada Supreme Court,  
22 pursuant to Nevada R. App. P. 5, a question of law regarding whether an employer must offer a  
23 health benefits plan to its employees or enroll its employees in the offered plan in order to take  
24 advantage of the lower-tier minimum hourly wage rate under Nev. Const. art. XV, sec. 16 (the  
25 "Minimum Wage Amendment," or the "MWA"). In an order contemporaneous with its order  
26 directing the certified question to the Nevada Supreme Court, this Court stayed proceedings on all  
27 briefing with the exception of Plaintiffs' Motion for Rule 54(b) Certification [ECF No. 101],  
28

1 Plaintiffs' Motion to Amend [ECF No. 94], and Defendant's Motion to Compel Arbitration [ECF  
2 No. 104]. [ECF Doc. 118]. The Court also extended the deadline for submission of Plaintiffs'  
3 motion for class certification for 30 days following resolution of the NRAP 5 question. [ECF Doc.  
4 118].

5 On March 7, 2016, the Court denied Plaintiffs' Motion for Certification [ECF No. 101] and  
6 Plaintiffs' Motion to Amend [ECF No. 94], and granted Defendant's Motion to Compel Arbitration  
7 [ECF No. 104]. [ECF No. 123]. At that time, in light of the ongoing stay, this Court denied without  
8 prejudice several pending motions in this action, to await the Nevada Supreme Court's resolution  
9 of the issue presented to it. Those motions included Defendant's motion to disqualify [ECF No.  
10 106], Defendant's motion for summary judgment [ECF No. 107], and Plaintiffs' motion for partial  
11 summary judgment [ECF No. 114].

12 The Nevada Supreme Court answered the certified question by virtue of an opinion issued  
13 on October 27, 2016, ruling that employers need only offer qualified health benefits in order to pay  
14 their employees at the lower-tier minimum hourly wage rate. *See Hanks v. Briad Restaurant*  
15 *Group*, Nev. S. Ct. Case No. 68845. Accordingly, Defendant's motion for summary judgment  
16 regarding the legal sufficiency of their plans and Plaintiffs' motion for class certification became  
17 ripe for renewal.

18 As indicated by Defendant's renewed motion for summary judgment [ECF No. 128] and  
19 Plaintiffs' renewed motion for class certification [ECF No. 127], now both recently refiled, there  
20 remains one outstanding, determinative issue in this action—whether Defendant's health benefits  
21 plans constitute qualified health insurance under the MWA.

22 The MWA provides, among other things, as follows:

23 Offering health benefits within the meaning of this section shall consist of  
24 making health insurance available to the employee for the employee and the  
25 employee's dependents at a total cost to the employee for premiums of not more  
than 10 percent of the employee's gross taxable income from the employer.

26 *See Nev. Const. art. XV § 16.* It is Plaintiffs' position that Defendant's health benefits plans do not  
27 meet the legal standards for qualifying health insurance under the MWA. Defendant maintains that  
28 the plans do qualify as health insurance under the MWA. The appropriate standard for determining

1 what health benefits qualify an employer to pay the lower-tier wage under the MWA is a matter of  
2 first impression in Nevada law that will be dispositive of the remaining issues in this case.

3 The differences between the parties underpin both pending motions before the Court:  
4 Defendant argues it should be granted summary judgment because it alleges its plans meet what it  
5 considers to be the correct legal standard, N.A.C. 608.102. Plaintiffs contend that not only do  
6 Defendant's plans not meet the standard in N.A.C. 608.102, but that the appropriate standard for  
7 judging health insurance plans in Nevada is actually NRS Chapters 689A and 689B, that  
8 Defendant's plans do not qualify under that analysis, and they ask for certification of the following  
9 proposed class:

10 All current and former employees of Defendants at their Nevada locations who  
11 were paid less than \$8.25 per hour at any time since May 19, 2012, and who  
12 were offered health benefits plans that did not qualify Defendants to pay less  
than that amount pursuant to Nev. Const. art. XV, sec. 16, excluding those  
employees who executed enforceable arbitration agreements.

13 Clearly, the question of what constitutes a qualified health insurance plan under the MWA  
14 is central to both parties' motions. The parties agree that the answer to this question is the  
15 remaining dispositive issue in the case, and that a clear answer from the Nevada Supreme Court  
16 will resolve the action.

17 The parties agree, therefore, that a certified question to the Nevada Supreme is the most  
18 economical manner of settling the question in lieu of full rounds of briefing, argument, and  
19 continued discovery and other litigation before this Court and, potentially, before the United States  
20 Court of Appeals for the Ninth Circuit

21 Fortunately, this particular issue is already before the Nevada Supreme Court as part of a  
22 writ petition in a separate case. *See MDC v. Eighth Judicial District Court*, Nev. S. Ct. Case No.  
23 71289. It would be the intention of the parties here, if the Nevada Supreme court accepts the  
24 proposed certified question herein, to seek to consolidate this matter with the pending writ, in hopes  
25 of having all these actions resolved expeditiously.

26 In light of all this, the parties propose the following certified question:

27 What constitutes "health benefits" offered by an employer for purposes of  
28 paying below the upper-tier minimum hourly wage rate under Nev. Const.  
art XV, sec 16(A)?

1 See Proposed Order, attached to this joint motion as **Exhibit A**.

2 The parties also request a temporary stay in this case's briefing to avoid unnecessary costs  
3 associated with litigating the pending motions for summary judgment and class certification.  
4 Specifically, the parties jointly propose that the responsive briefing deadlines for the two pending  
5 motions be stayed until 21 days after the Nevada Supreme Court's resolution of the certified  
6 question. The parties submit that staying the response deadlines, rather than denying the motions  
7 without prejudice, will save the parties from incurring the additional costs of renewing the motions.  
8

9 Dated: December 19, 2016

10  
11 Respectfully submitted,

Respectfully submitted,

12  
13 /s/ Bradley Schrager

14 DON SPRINGMEYER, ESQ.  
15 BRADLEY SCHRAGER, ESQ.  
16 DANIEL HILL, ESQ.  
WOLF, RIFKIN, SHAPIRO,  
SCHULMAN & RABKIN, LLP

Attorneys for Plaintiffs

/s/ Rick Roskelley

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

Attorneys for Defendant



**CERTIFICATE OF SERVICE**

I hereby certify that on this 19th day of December 2016, a true and correct copy of **JOINT MOTION FOR CERTIFICATION OF QUESTION OF LAW TO THE NEVADA SUPREME COURT AND FOR STAY AND PROPOSED ORDER** was served via the United States District Court CM/ECF system on all parties or persons requiring notice.

By: /s/ Christie Rehfeld

Christie Rehfeld, an Employee of  
WOLF, RIFKIN, SHAPIRO, SCHULMAN &  
RABKIN, LLP

## **EXHIBIT “A”**

**[PROPOSED] ORDER GRANTING JOINT  
MOTION FOR CERTIFICATION OF  
QUESTION OF LAW TO THE NEVADA  
SUPREME COURT PURSUANT TO N.R.A.P.  
5 AND FOR STAY**

**EXHIBIT “A”**

1 DON SPRINGMEYER, ESQ.  
Nevada State Bar No. 1021  
2 BRADLEY SCHRAGER, ESQ.  
Nevada State Bar No. 10217  
3 DANIEL BRAVO, ESQ.  
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8 *Attorneys for Plaintiffs*

9  
10 **UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

11 ERIN HANKS, an individual; DEATRA  
12 ENARI, an individual; JEFFREY  
ANDERSON, an individual; TOBY EARL,  
13 an individual; SHYHEEM SMITH, an  
individual; ROBERT BAKER, an  
14 individual, JAMES SKADOWSKI, an  
individual, MICHELLE PICKTHALL, an  
15 individual, all on behalf of themselves and  
all similarly-situated individuals,

16 Plaintiffs,

17 vs.

18 BRIAD RESTAURANT GROUP, LLC., a  
19 New Jersey limited liability company; and  
DOES 1 through 100, Inclusive,

20 Defendants.  
21

**Case No: 2:14-cv-00786-GMN-PAL**

**[PROPOSED] ORDER GRANTING  
JOINT MOTION FOR  
CERTIFICATION OF QUESTION OF  
LAW TO THE NEVADA SUPREME  
COURT PURSUANT TO N.R.A.P. 5  
AND FOR STAY**

22 This matter comes before the Court on the parties' joint motion for certification of question  
23 of law to the Nevada Supreme Court.

24 On September 15, 2015 [ECF No. 119], this Court certified to the Nevada Supreme Court,  
25 pursuant to Nevada R. App. P. 5, a question of law regarding whether an employer must provide or  
26 merely offer a health benefits plan to its employees in order to take advantage of the lower-tier  
27 minimum hourly wage rate under Nev. Const. art. XV, sec. 16 (the "Minimum Wage Amendment,"  
28 or the "MWA"). At that time, this Court stayed proceedings and denied without prejudice several

1 pending motions in this action, to await the Nevada Supreme Court's resolution of the issue  
2 presented to it. Those motions included Defendant's motion to disqualify [ECF No. 106],  
3 Defendant's motion for summary judgment [ECF No. 107], and Plaintiffs' motion for partial  
4 summary judgment [ECF No. 114]. In an order contemporaneous with its order directing the  
5 certified question to the Nevada Supreme Court, this Court also extended the deadline for  
6 submission of Plaintiffs' motion for class certification for 30 days following resolution of the  
7 NRAP 5 question. ECF Doc. 118.

8 The Nevada Supreme Court answered the certified question by virtue of an opinion issued  
9 on October 27, 2016, ruling that employers need only offer qualified health benefits in order to pay  
10 their employees at the lower-tier minimum hourly wage rate. *See Hanks v. Briad Restaurant*  
11 *Group*, Nev. S. Ct. Case No. 68845. Accordingly, Defendant's motion for summary judgment  
12 regarding the legal sufficiency of their plans and Plaintiffs' motion for class certification became  
13 ripe for renewal.

14 As indicated by Defendant's renewed motion for summary judgment [ECF Doc 128] and  
15 Plaintiffs' renewed motion for class certification [ECF No. 127], now both recently refiled, the  
16 parties agree that there remains one outstanding, determinative issue in this action—whether  
17 Defendant's health benefits plans constitute qualified health insurance under the MWA.

18 The MWA provides, among other things, as follows:

19 Offering health benefits within the meaning of this section shall consist of  
20 making health insurance available to the employee for the employee and the  
21 employee's dependents at a total cost to the employee for premiums of not more  
than 10 percent of the employee's gross taxable income from the employer.

22 *See Nev. Const. art. XV § 16.* It is Plaintiffs' position that Defendant's health benefits plans do not  
23 meet the legal standards for qualifying health insurance under the MWA. Defendant maintains that  
24 the plans do qualify as health insurance under the MWA. The appropriate standard for determining  
25 what health benefits plans do qualify an employer to pay the lower-tier wage under the MWA is a  
26 matter of first impression in Nevada law that will be dispositive of the remaining issues in this case.

27 Clearly, the question of what constitutes a qualified health insurance plan under the MWA  
28 is central to both parties' current motions. The parties agree that a clear answer from the Nevada

1 Supreme Court on this issue likely will resolve the action.

2 Under NRAP 5, a United States District court may certify a question of law to the Nevada  
3 Supreme Court “upon the court’s own motion.” The Nevada Supreme Court has the power to  
4 answer such a question when it “may be determinative of the case then pending in the certifying  
5 court and...it appears to the certifying court there is no controlling precedent in the decisions of the  
6 Supreme Court of [Nevada].” Nev. R. App. P. 5(a). In this case, the Court sits in diversity  
7 jurisdiction, and Nevada substantive law controls. This Court does not find any controlling decision  
8 from the Nevada Supreme Court that settles the legal standard for what constitutes “health  
9 insurance” under the MWA. Under Rule 5, the Nevada Supreme Court may answer that question.

10 Rule 5 also provides that a certification order must specifically address each of six  
11 requirements:

- 12 1. The questions of law to be answered;
- 13 2. A statement of all facts relevant to the questions certified;
- 14 3. The nature of the controversy in which the questions arose;
- 15 4. A designation of the party or parties who will be the appellant(s) and the party or  
16 parties who will be the respondent(s) in the Supreme Court;
- 17 5. The names and addresses of counsel for the appellant and respondent; and
- 18 6. Any other matters that the certifying court deems relevant to a determination of the  
question certified.

19 Nev. R. App. P. 5(c). The relevant facts and the nature of the controversy are set forth above. The  
20 particular health benefits plans offered by Defendants during the operative proposed class period  
21 have been attached previously to motions by the parties. *See Exhibits to* ECF Nos. 78, 81, & 84.  
22 The Court addresses the remaining requirements below.

23 Furthermore, based on the parties’ joint request and good cause appearing, no responses to  
24 Defendant’s motion for summary judgment or to Plaintiffs’ motion for class certification shall be  
25 due until 30 days after the Nevada Supreme Court resolves the question certified below.

26 Accordingly,

27 **IT IS HEREBY ORDERED** that the parties’ Joint Motion for Certification of Question of  
28 Law to the Nevada Supreme Court (ECF No. \_\_\_\_\_) is **GRANTED** as follows:

1           1.       The following question is certified to the Nevada Supreme Court pursuant to  
2 Nevada Rule of Appellate Procedure 5:

3                   *What constitutes “health benefits” offered by an employer for purposes of*  
4                   *paying below the upper-tier minimum hourly wage rate under Nev. Const.*  
                  *art XV, sec 16(A)?*

5           2.       Plaintiff Erin Hanks shall be designated as the appellant, and Defendant  
6 shall be designated as respondent.

7           3.       The names and addresses of counsel are as follows:

8           **Counsel for Appellant**

9           Bradley Schrager, Daniel Bravo, and Don Springmeyer  
10          Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP  
             3556 East Russell Road, 2nd Floor  
             Las Vegas, Nevada 89120.

11          **Counsel for Respondent**

12          Rick Roskelley, Roger Grandgennet, Montgomery Paek, and Kathryn Blakey  
13          Littler Mendelson, PC  
             3690 Howard Hughes Parkway, Suite 300  
             Las Vegas, Nevada 89169

14          4.       The Clerk of the Court shall forward a copy of this Order to the Clerk  
15 of the Supreme Court of Nevada under the seal of the United States District Court for  
16 the District of Nevada.

17          **IT IS FURTHER ORDERED** that the parties’ request for a stay in the  
18 briefing schedule for Defendant’s Motion for Summary Judgment and Plaintiffs’  
19 Motion for Class Certification is **GRANTED** as follows:

20          1.       Any response to Defendant’s Motion for Summary Judgment (ECF No.  
21 128) shall be due no later than 30 days after the Nevada Supreme Court resolves the  
22 question certified above.

23       ///

24       ///

25       ///

26       ///

27       ///

28       ///

DATED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

5

**Melwak, Erin J.**

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**From:** cmecf@nvd.uscourts.gov  
**Sent:** Monday, December 19, 2016 9:46 AM  
**To:** cmecfhelpdesk@nvd.uscourts.gov  
**Subject:** Activity in Case 2:14-cv-00786-GMN-PAL Hanks, et al. v. Briad Restaurant Group, LLC Motion

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**United States District Court**

**District of Nevada**

### **Notice of Electronic Filing**

The following transaction was entered by Schrager, Bradley on 12/19/2016 at 9:45 AM PST and filed on 12/19/2016

**Case Name:** Hanks, et al. v. Briad Restaurant Group, LLC  
**Case Number:** [2:14-cv-00786-GMN-PAL](#)  
**Filer:** Jeffrey Anderson  
Robert Baker  
Toby Earl  
Deatra Enari  
Erin Hanks  
Michelle Pickthall  
James Skadowski  
Shyheem Smith

**Document Number:** [130](#)

#### **Docket Text:**

**Joint MOTION Certification of Question of Law to the Nevada Supreme Court and for Stay by Plaintiffs Jeffrey Anderson, Robert Baker, Toby Earl, Deatra Enari, Erin Hanks, Michelle Pickthall, James Skadowski, Shyheem Smith. Responses due by 1/2/2017. (Attachments: # (1) Proposed Order)(Schrager, Bradley)**

**2:14-cv-00786-GMN-PAL Notice has been electronically mailed to:**

Bradley Scott Schrager [bschrager@wrslawyers.com](mailto:bschrager@wrslawyers.com), [crehfeld@wrslawyers.com](mailto:crehfeld@wrslawyers.com),  
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**2:14-cv-00786-GMN-PAL Notice has been delivered by other means to:**

Robert Baker  
5412 Danville Lane  
Las Vegas, NV 89119

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[STAMP dcecfStamp\_ID=1101333072 [Date=12/19/2016] [FileNumber=7930176-0] [c348c39a05b6925d6fdca75933eacbd3e55e9cab530188333731bd6ec8b577cec4ed12407a9d3b62da483ad13d6cad5bb3d8d7b2672dffffa968c2a406eaab4d]]

**Document description:**Proposed Order

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EXHIBIT A

EXHIBIT A

1 DON SPRINGMEYER, ESQ.  
Nevada State Bar No. 1021  
2 BRADLEY SCHRAGER, ESQ.  
Nevada State Bar No. 10217  
3 DAN HILL, ESQ.  
Nevada State Bar No. 12773  
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Nevada State Bar No. 13078  
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9 *Attorneys for Plaintiffs*

10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF NEVADA**  
12

13 LATONYA TYUS, an individual; DAVID  
HUNSICKER, an individual; LINDA  
14 DAVIS, an individual; TERRON SHARP,  
an individual; COLLINS KWAYISI, an  
15 individual; LEE JONES, an individual;  
RAISSA BURTON, an individual;  
16 JERMEY MCKINNEY, an individual; and  
FLORENCE EDJEOU, an individual, all on  
17 behalf of themselves and all similarly-  
situated individuals,

18 Plaintiffs,

19 vs.

20 WENDY'S OF LAS VEGAS, INC., an  
Ohio corporation; CEDAR ENTERPRISES,  
21 INC., an Ohio Corporation; and DOES 1  
through 100, Inclusive,  
22

23 Defendants.

**Case No: 2:14-cv-00729-GMN-VCF**

**JOINT MOTION FOR CERTIFICATION  
OF QUESTION OF LAW TO THE  
NEVADA SUPREME COURT AND FOR  
STAY AND PROPOSED ORDER**

24 This is Plaintiffs' and Defendants' joint motion for certification of question of law to the  
25 Nevada Supreme Court under Nevada Rule of Appellate Procedure 5 ("NRAP 5").  
26

27 On August 21, 2015 [ECF No. 71], this Court certified to the Nevada Supreme Court,  
28 pursuant to Nevada R. App. P. 5, a question of law regarding whether an employer must offer a

1 health benefits plan to its employees or enroll its employees in the offered plan in order to take  
2 advantage of the lower-tier minimum hourly wage rate under Nev. Const. art. XV, sec. 16 (the  
3 “Minimum Wage Amendment,” or the “MWA”). In an order contemporaneous with its order  
4 directing the certified question to the Nevada Supreme Court, this Court denied without prejudice  
5 several pending motions in this action, to await the Nevada Supreme Court’s resolution of the issue  
6 presented to it. Those motions included Plaintiffs’ motion for partial summary judgment [ECF No.  
7 48], Plaintiffs’ motion to certify class [ECF No. 51], Plaintiffs’ motion to amend order [ECF No.  
8 61], and Defendants’ motion to strike [ECF No. 64]. The Court ordered that the motions be re-filed  
9 within 30 days of the Nevada Supreme Court’s resolution of the certified question. *See* ECF No.  
10 71.

11 The Nevada Supreme Court answered the certified question by virtue of an opinion issued  
12 on October 27, 2016, ruling that employers need only offer qualified health benefits in order to pay  
13 their employees at the lower-tier minimum hourly wage rate. *See Kwayisi v. Wendy’s of Las Vegas*,  
14 Nev. S. Ct. Case No. 68754. Accordingly, Plaintiffs’ motion for class certification became ripe for  
15 renewal. Furthermore, Defendants have since filed another motion for summary judgment [ECF  
16 No. 77].

17 As indicated by Defendants’ motion for summary judgment [ECF No. 77] and Plaintiffs’  
18 renewed motion for class certification [ECF No. 76], now both recently refiled, there remains one  
19 outstanding, determinative issue in this action—whether Defendant’s health benefits plans  
20 constitute qualified health insurance under the MWA.

21 The MWA provides, among other things, as follows:

22 Offering health benefits within the meaning of this section shall consist of  
23 making health insurance available to the employee for the employee and the  
24 employee’s dependents at a total cost to the employee for premiums of not more  
than 10 percent of the employee’s gross taxable income from the employer.

25 *See* Nev. Const. art. XV § 16. It is Plaintiffs’ position that Defendants’ health benefits plans do not  
26 meet the legal standards for qualifying health insurance under the MWA. Defendants maintain that  
27 the plans do qualify as health insurance under the MWA. The appropriate standard for determining  
28 what health benefits qualify an employer to pay the lower-tier wage under the MWA is a matter of

1 first impression in Nevada law that will be dispositive of the remaining issues in this case.

2       The differences between the parties underpin both pending motions before the Court:  
3 Defendants argue they should be granted summary judgment because they allege their plans meet  
4 what they consider to be the correct legal standard, N.A.C. 608.102. Plaintiffs contend that not only  
5 do Defendants' plans not meet the standard in N.A.C. 608.102, but that the appropriate standard for  
6 judging health insurance plans in Nevada is actually NRS Chapters 689A and 689B, that  
7 Defendants' plans do not qualify under that analysis, and they ask for certification of the following  
8 proposed class:

9           All current and former employees of Defendants at their Nevada locations who  
10          were paid less than \$8.25 per hour at any time since May 9, 2012, and who were  
11          offered health benefits plans that did not qualify Defendants to pay less than that  
12          amount pursuant to Nev. Const. art. XV, sec. 16, excluding those employees  
13          who executed enforceable arbitration agreements.

14       Clearly, the question of what constitutes a qualified health insurance plan under the MWA  
15 is central to both parties' motions. The parties agree that the answer to this question is the  
16 remaining dispositive issue in the case, and that a clear answer from the Nevada Supreme Court  
17 will resolve the action.

18       The parties agree, therefore, that a certified question to the Nevada Supreme is the most  
19 economical manner of settling the question in lieu of full rounds of briefing, argument, and  
20 continued discovery and other litigation before this Court and, potentially, before the United States  
21 Court of Appeals for the Ninth Circuit

22       Fortunately, this particular issue is already before the Nevada Supreme Court as part of a  
23 writ petition in a separate case. *See MDC v. Eighth Judicial District Court*, Nev. S. Ct. Case No.  
24 71289. It would be the intention of the parties here, if the Nevada Supreme court accepts the  
25 proposed certified question herein, to seek to consolidate this matter with the pending writ, in hopes  
26 of having all these actions resolved expeditiously.

27       In light of all this, the parties propose the following certified question:

28           What constitutes "health benefits" offered by an employer for purposes of  
29          paying below the upper-tier minimum hourly wage rate under Nev. Const.  
30          art XV, sec 16(A)?

31       *See* Proposed Order, attached to this joint motion as **Exhibit A**.

1 The parties also request a temporary stay in this case's briefing to avoid unnecessary costs  
2 associated with litigating the pending motions for summary judgment and class certification.  
3 Specifically, the parties jointly propose that the responsive briefing deadlines for the two pending  
4 motions be stayed until 21 days after the Nevada Supreme Court's resolution of the certified  
5 question. The parties submit that staying the response deadlines, rather than denying the motions  
6 without prejudice, will save the parties from incurring the additional costs of renewing the motions.

7  
8 Dated: December 16, 2016

9 Respectfully submitted,

Respectfully submitted,

10  
11 /s/ Bradley Schrager

12 DON SPRINGMEYER, ESQ.  
13 BRADLEY SCHRAGER, ESQ.  
14 DANIEL HILL, ESQ.  
WOLF, RIFKIN, SHAPIRO,  
SCHULMAN & RABKIN, LLP

15 Attorneys for Plaintiffs

/s/ Rick Roskelley

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

21 Attorneys for Defendants  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on this 16th day of December 2016, a true and correct copy of **JOINT MOTION FOR CERTIFICATION OF QUESTION OF LAW TO THE NEVADA SUPREME COURT AND FOR STAY AND PROPOSED ORDER** was served via the United States District Court CM/ECF system on all parties or persons requiring notice.

By: /s/ Christie Rehfeld

Christie Rehfeld, an Employee of  
WOLF, RIFKIN, SHAPIRO, SCHULMAN &  
RABKIN, LLP

1 DON SPRINGMEYER, ESQ.  
Nevada State Bar No. 1021  
2 BRADLEY SCHRAGER, ESQ.  
Nevada State Bar No. 10217  
3 DAN HILL, ESQ.  
Nevada State Bar No. 12773  
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Email: dbravo@wrslawyers.com  
9 *Attorneys for Plaintiffs*

10  
11 **UNITED STATES DISTRICT COURT**  
12 **DISTRICT OF NEVADA**

13 LATONYA TYUS, an individual; DAVID  
HUNSICKER, an individual; LINDA  
14 DAVIS, an individual; TERRON SHARP,  
an individual; COLLINS KWAYISI, an  
15 individual; LEE JONES, an individual;  
RAISSA BURTON, an individual;  
16 JERMEY MCKINNEY, an individual; and  
FLORENCE EDJEOU, an individual, all on  
17 behalf of themselves and all similarly-  
situated individuals,

18 Plaintiffs,

19 vs.

20 WENDY'S OF LAS VEGAS, INC., an  
Ohio corporation; CEDAR ENTERPRISES,  
21 INC., an Ohio Corporation; and DOES 1  
22 through 100, Inclusive,

23 Defendants.

**Case No: 2:14-cv-00729-GMN-VCF**

**[PROPOSED] ORDER GRANTING JOINT  
MOTION FOR CERTIFICATION OF  
QUESTION OF LAW TO THE NEVADA  
SUPREME COURT PURSUANT TO  
N.R.A.P. 5 AND FOR STAY**

24 This matter comes before the Court on the parties' joint motion for certification of question  
25 of law to the Nevada Supreme Court.

26 On August 21, 2015 [ECF No. 71], this Court certified to the Nevada Supreme Court,  
27 pursuant to Nevada R. App. P. 5, a question of law regarding whether an employer must provide or  
28



1 merely offer a health benefits plan to its employees in order to take advantage of the lower-tier  
2 minimum hourly wage rate under Nev. Const. art. XV, sec. 16 (the “Minimum Wage Amendment,”  
3 or the “MWA”). At that time, this Court denied without prejudice several pending motions in this  
4 action, to await the Nevada Supreme Court’s resolution of the issue presented to it. Those motions  
5 included Plaintiffs’ motion for partial summary judgment [ECF No. 48], Plaintiffs’ motion to  
6 certify class [ECF No. 51], Plaintiffs’ motion to amend order [ECF No. 61], and Defendants’  
7 motion to strike [ECF No. 64]. The Court ordered that the motions be re-filed within 30 days of the  
8 Nevada Supreme Court’s resolution of the certified question. *See* ECF No. 71.

9       The Nevada Supreme Court answered the certified question by virtue of an opinion issued  
10 on October 27, 2016, ruling that employers need only offer qualified health benefits in order to pay  
11 their employees at the lower-tier minimum hourly wage rate. *See Kwayisi v. Wendy’s of Las Vegas*,  
12 Nev. S. Ct. Case No. 68754. Accordingly, Plaintiffs’ motion for class certification became ripe for  
13 renewal. Furthermore, Defendants have since filed another motion for summary judgment [ECF  
14 No. 77].

15       As indicated by Defendants’ motion for summary judgment [ECF No. 77] and Plaintiffs’  
16 renewed motion for class certification [ECF No. 76], now both recently refiled, there remains one  
17 outstanding, determinative issue in this action—whether Defendants’ health benefits plans  
18 constitute qualified health insurance under to the MWA.

19       The MWA provides, among other things, as follows:

20           Offering health benefits within the meaning of this section shall consist of  
21           making health insurance available to the employee for the employee and the  
22           employee’s dependents at a total cost to the employee for premiums of not more  
23           than 10 percent of the employee’s gross taxable income from the employer.

23       *See* Nev. Const. art. XV § 16. It is Plaintiffs’ position that Defendants’ health benefits plans do not  
24 meet the legal standards for qualifying health insurance under the MWA. Defendants maintain that  
25 the plans do qualify as health insurance under the MWA. The appropriate standard for determining  
26 what health benefits plans do qualify an employer to pay the lower-tier wage under the MWA is a  
27 matter of first impression in Nevada law that will be dispositive of the remaining issues in this case.

28       Clearly, the question of what constitutes a qualified health insurance plan under the MWA

1 is central to both parties' current motions. The parties agree that a clear answer from the Nevada  
2 Supreme Court on this issue likely will resolve the action.

3 Under NRAP 5, a United States District court may certify a question of law to the Nevada  
4 Supreme Court "upon the court's own motion." The Nevada Supreme Court has the power to  
5 answer such a question when it "may be determinative of the case then pending in the certifying  
6 court and...it appears to the certifying court there is no controlling precedent in the decisions of the  
7 Supreme Court of [Nevada]." Nev. R. App. P. 5(a). In this case, the Court sits in diversity  
8 jurisdiction, and Nevada substantive law controls. This Court does not find any controlling decision  
9 from the Nevada Supreme Court that settles the legal standard for what constitutes "health  
10 insurance" under the MWA. Under Rule 5, the Nevada Supreme Court may answer that question.

11 Rule 5 also provides that a certification order must specifically address each of six  
12 requirements:

- 13 1. The questions of law to be answered;
- 14 2. A statement of all facts relevant to the questions certified;
- 15 3. The nature of the controversy in which the questions arose;
- 16 4. A designation of the party or parties who will be the appellant(s) and the party or  
17 parties who will be the respondent(s) in the Supreme Court;
- 18 5. The names and addresses of counsel for the appellant and respondent; and
- 19 6. Any other matters that the certifying court deems relevant to a determination of the  
question certified.

20 Nev. R. App. P. 5(c). The relevant facts and the nature of the controversy are set forth above. The  
21 particular health benefits plans offered by Defendants during the operative proposed class period  
22 have been attached previously to motions by the parties. *See* ECF No. 60, Exhs. 6-9.

23 Furthermore, based on the parties' joint request and good cause appearing, no responses to  
24 Defendants' motion for summary judgment or to Plaintiffs' motion for class certification shall be  
25 due until 30 days after the Nevada Supreme Court resolves the question certified below.

26 Accordingly,

27 **IT IS HEREBY ORDERED** that the parties' Joint Motion for Certification of Question of  
28 Law to the Nevada Supreme Court [ECF No. 78] is **GRANTED** as follows:

1           1.       The following question is certified to the Nevada Supreme Court pursuant to  
2 Nevada Rule of Appellate Procedure 5:

3                   *What constitutes “health benefits” offered by an employer for purposes of*  
4                   *paying below the upper-tier minimum hourly wage rate under Nev. Const.*  
                  *art XV, sec 16(A)?*

5           2.       Plaintiff Lotonya Tyus shall be designated as the appellant, and  
6 Defendants shall be designated as respondent.

7           3.       The names and addresses of counsel are as follows:

8           **Counsel for Appellant**

9           Bradley Schrager, Daniel Bravo, and Don Springmeyer  
10          Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP  
             3556 East Russell Road, 2nd Floor  
             Las Vegas, Nevada 89120.

11          **Counsel for Respondent**

12          Rick Roskelley, Roger Grandgennet, Montgomery Paek, and Kathryn Blakey  
13          Littler Mendelson, PC  
             3690 Howard Hughes Parkway, Suite 300  
             Las Vegas, Nevada 89169

14          4.       The Clerk of the Court shall forward a copy of this Order to the Clerk  
15 of the Supreme Court of Nevada under the seal of the United States District Court for  
16 the District of Nevada.

17          **IT IS FURTHER ORDERED** that the parties’ request for a stay in the  
18 briefing schedule for Defendant’s Motion for Summary Judgment and Plaintiffs’  
19 Motion for Class Certification is **GRANTED** as follows:

20          1.       Any response to Defendant’s Motion for Summary Judgment [ECF No.  
21 77] shall be due no later than 30 days after the Nevada Supreme Court resolves the  
22 question certified above.

23       ///

24       ///

25       ///

26       ///

27       ///

28       ///

DATED this \_\_\_\_ day of \_\_\_\_\_ 2016.

GLORIA M. NAVARRO  
UNITED STATES DISTRICT JUDGE

**Melwak, Erin J.**

---

**From:** cmecf@nvd.uscourts.gov  
**Sent:** Friday, December 16, 2016 11:38 AM  
**To:** cmecfhelpdesk@nvd.uscourts.gov  
**Subject:** Activity in Case 2:14-cv-00729-GMN-VCF Tyus et al v. Wendy's of Las Vegas, Inc. et al Motion

**This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.**

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**United States District Court**

**District of Nevada**

**Notice of Electronic Filing**

The following transaction was entered by Schrager, Bradley on 12/16/2016 at 11:37 AM PST and filed on 12/16/2016

**Case Name:** Tyus et al v. Wendy's of Las Vegas, Inc. et al  
**Case Number:** [2:14-cv-00729-GMN-VCF](#)  
**Filer:** Raissa Burton  
Linda Davis  
Florence Edjeou  
David Hunsicker  
Lee Jones  
Collins Kwayisi  
Jeremy McKinney  
Terron Sharp  
Latonya Tyus

**Document Number:** [78](#)

**Docket Text:**

**Joint MOTION for Certification of Question of Law to the Nevada Supreme Court NRAP 5 by Plaintiffs Raissa Burton, Linda Davis, Florence Edjeou, David Hunsicker, Lee Jones, Collins Kwayisi, Jeremy McKinney, Terron Sharp, Latonya Tyus. Responses due by 12/30/2016. (Attachments: # (1) Proposed Order)(Schrager, Bradley)**

**2:14-cv-00729-GMN-VCF Notice has been electronically mailed to:**

Bradley Scott Schrager [bschrager@wrslawyers.com](mailto:bschrager@wrslawyers.com), [crehfeld@wrslawyers.com](mailto:crehfeld@wrslawyers.com),

[dfresquez@wrslawyers.com](mailto:dfresquez@wrslawyers.com), [lrillera@wrslawyers.com](mailto:lrillera@wrslawyers.com), [ODavidoff@wrslawyers.com](mailto:ODavidoff@wrslawyers.com)

Daniel Bravo [dbravo@wrslawyers.com](mailto:dbravo@wrslawyers.com)

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Roger L Grandgenett [rgrandgenett@littler.com](mailto:rgrandgenett@littler.com), [emelwak@littler.com](mailto:emelwak@littler.com)

**2:14-cv-00729-GMN-VCF Notice has been delivered by other means to:**

Linda Davis  
1251 S. Cimarron, #53  
Las Vegas, NV 89117

Terron Sharp  
5474 Winning Spirit Lane  
Las Vegas, NV 89113

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1101333072 [Date=12/16/2016] [FileNumber=7928530-0] [0a4777f4a78f12c4ea50f49e805105dfc93ece21d640c5349843671ba66fb098a9c27a2efa04db7350b4c4f14ceda7491c04a048f8418b0a04bc084170d81c60]]

**Document description:**Proposed Order

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1101333072 [Date=12/16/2016] [FileNumber=7928530-1] [6eac174e6d13555a111f33c649994fa9a1d48cf250d2a160dcafec0b9f804d10c21c957d7c11b5ac239ead27de090eeb1a8c2c962bd8c8f6faa7b66764f33d54]]

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

MDC RESTAURANTS, LLC;  
LAGUNA RESTAURANTS, LLC;  
AND INKA, LLC,

Petitioners,

vs.

THE EIGHTH JUDICIAL  
DISTRICT COURT OF THE STATE  
OF NEVADA, IN AND FOR THE  
COUNTY OF CLARK, AND THE  
HONORABLE TIMOTHY C.  
WILLIAMS, DISTRICT JUDGE,

Respondents,

and

PAULETTE DIAZ; LAWANDA  
GAIL WILBANKS; SHANNON  
OLSZYNSKI; AND CHARITY  
FITZLAFF, ALL ON BEHALF OF  
THEMSELVES AND ALL  
SIMILARLY-SITUATED  
INDIVIDUALS,

Real Party in Interest.

Electronically Filed  
Jan 25 2017 08:17 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

**AMICUS CURIAE BRIAD  
RESTAURANT GROUP, L.L.C.,  
WENDY'S OF LAS VEGAS, INC.,  
CEDAR ENTERPRISES, INC., AND  
TERRIBLE HERBST, INC.'S  
NOTICE RE: REAL PARTIES IN  
INTEREST'S REQUEST FOR  
EXPEDITED TREATMENT**

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 Amici Curiae Briad Restaurant Group, L.L.C., Wendy's of Las  
Vegas, Inc., Cedar Enterprises, Inc., and Terrible Herbst, Inc.*

Comes now, BRIAD RESTAURANT GROUP, L.L.C., WENDY'S OF LAS VEGAS, INC., CEDAR ENTERPRISES, INC., and TERRIBLE HERBST, INC., by and through their undersigned attorneys, Littler Mendelson, P.C., hereby respectfully notify the Court of briefing relevant to Real Parties in Interest's Request for Expedited Treatment.

### **NOTICE**

On January 12, 2017, Real Parties in Interest filed a Request for Expedited Treatment requesting that this Court expedite its treatment of their writ petition.<sup>1</sup> Therein, Real Parties in Interest indicate that resolution of their writ petition will have important implications on the following matters wherein *Amici Curiae* are parties and Real Parties in Interest's counsel represents the respective plaintiffs:

- *Tyus et al. v. Wendy's of Las Vegas, Inc. et al.*, D. Nev., Case No. 2:14-cv-00729-GMN-VCF, filed May 9, 2014. ("*Tyus*").
- *Hanks et al. v. Briad Restaurant Group, LLC*, D. Nev., Case No. 2:14-cv-00786-GMN-PAL, filed May 19, 2014. ("*Hanks*")
- *Ringo v. Terrible Herbst Inc. d/b/a/ Terrible Herbst*, Eighth Judicial District Court, Case No. A-14-704428-C, filed July 25, 2014. ("*Ringo*").<sup>2</sup>

In both *Tyus* and *Hanks*, the parties have filed Joint Motions for Certification

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<sup>1</sup> Real Parties in Interest cite to Nevada Rule of Appellate Procedure (NRAP) 2 which permits the Court to expedite a decision. Currently, there are no decisions pending in this case and NRAP 2 does not extend to "treatment" of issues as presented in writ petitions.

<sup>2</sup> The parties in *Ringo* submitted a notice of voluntarily dismissal to the district court on or around January 10, 2017, effectively closing that matter in its entirety. **Exhibit C.**



of Law to the Nevada Supreme Court and for Stay and Proposed Order. **Exhibit A** and **Exhibit B**, respectively. Those motions request for the presiding District of Nevada judge to certify under NRAP 5 the same issue of law that is currently pending before the Court in this case on those cases as well. Thereafter, the parties will seek to consolidate their certified questions with the instant matter which would allow this Court to address the issue in a single consolidated case.

Accordingly, *Amici Curiae* via the attached briefing hereby notify the Court of *Amici Curiae* and Real Party in Interest's intent to obtain certificated questions and provide briefing which they believe should be consolidated with the instant matter.

January 24, 2017

Respectfully submitted,

/s/ Kathryn B. Blakey, Esq.  
RICK D. ROSKELLEY, ESQ.  
ROGER L. GRANDGENETT, ESQ.  
MONTGOMERY Y. PAEK, ESQ.  
KATHRYN B. BLAKEY, ESQ.  
LITTLER MENDELSON, P.C.

*Attorneys for Proposed Amici Curiae*

## **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 January 24, 2017, I served the within document:

**AMICUS CURIAE BRIAD RESTAURANT GROUP, L.L.C., WENDY'S OF  
LAS VEGAS, INC., CEDAR ENTERPRISES, INC., AND TERRIBLE  
HERBST, INC.'S NOTICE RE: REAL PARTIES IN INTEREST'S  
REQUEST FOR EXPEDITED TREATMENT**

- ☒ 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.

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on January 24, 2017, at Las Vegas, Nevada.

/s/ Erin J. Melwak  
Erin J. Melwak

---