No. S166350

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

BRINKER RESTAURANT CORP., ET AL.
Petitioners,

vs.

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,
FOR THE COUNTY OF SAN DIEGO,
Respondent.

ADAM HOHNBAUM, ILLYA HAASE, ROMEO OSORIO,
AMANDA JUNE RADER and SANTANA ALVARADO,
Real Parties in Interest.

After a Decision by the Court of Appeal,
Fourth Appellate District, Division 1, Case No. D049331
San Diego County Superior Court, The Honorable Patricia A.Y. Cowett

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APPLICATION OF CALIFORNIA CHAPTERS and EMPLOYMENT AND LABOR LAW COMMITTEE OF ASSOCIATION OF CORPORATE COUNSEL FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONERS and *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONERS

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Pursuant to California Rule of Court 8.520 subdivision (f), the Southern California, San Diego, Sacramento and San Francisco Bay Area Chapters of the Association of Corporate Counsel ("the California ACC Chapters") and the Employment and Labor Law Committee of the Association of Corporate Counsel ("ELLC") apply for leave to file the attached Amici Curiae brief in support of Petitioners Brinker Restaurant Corporation, Brinker International, Inc., and Brinker International Payroll Company, Inc. ("Petitioners").

Interest of Amici

The Association of Corporate Counsel (ACC) is the world's largest organization serving the professional and business interests of attorneys who practice in the legal departments of corporations, associations and other private-sector organizations around the globe. It promotes the common interests of its members, contributes to their continuing education, and provides a voice on issues of national and international importance. The ACC has over 24,000 members employed by more than 10,000 organizations in 80 countries.

The four California Chapters of the ACC represent the interests of in-house counsel for employers across California. The Southern California ("ACCA-SoCal"), Sacramento, San Diego, and San Francisco Bay Area ACC Chapters each work to promote the interests and concerns of in-house counsel on a wide range of issues, including California employment law issues.

The California ACC Chapters have a key interest in this matter. As in-house counsel, ACC members are responsible for formulating employer policies and procedures to ensure compliance with California employment law. As in-house counsel, ACC members will be the California attorneys who have been most centrally involved in employer efforts to comply with

California's meal and rest period rules, and who will have to formulate policies and practices to ensure employers comply with the ruling that results from this case.

ACC's Employment and Labor Law Committee (ELLC), comprised of over 5,000 ACC member in-house counsel nationwide, serves as a voice for its committee members on critical legal issues affecting member counsels' employers. ELLC supports the California ACC Chapters' position in submitting this amicus brief.

Amici's Brief Will Aid the Court in Reaching Its Decision

As the attorneys most closely responsible for drafting and ensuring compliance with employer meal and rest period policies, ACC members have direct experience with the issues, concerns and problems raised by this litigation. Because its members cut across all industries and areas of the economy, the California ACC Chapters are uniquely positioned to provide the Court with the views of a broad spectrum of California's employers on both the legal and practical impacts of California's meal and rest break rules. This broad perspective will provide the Court with a wider employer view than from the restaurant industry in which Petitioner's business operates.

For these reasons, the California Chapters of the Association of Corporate Counsel respectfully request the Court grant their application to file the attached brief as *Amici Curiae* in support of Petitioners.

Dated: August 19, 2009

Respectfully submitted,

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AMICI CURIAE **BRIEF IN SUPPORT OF PETITIONERS**

In 1999, the California Legislature enacted Labor Code section 512, followed in 2000 by Labor Code section 226.7, statutes that directly and expressly govern employee meal and rest breaks. The Legislature decided employers should "provide" meal periods. This case presents two starkly different views about what the Legislature intended when it said employers must provide meal breaks.

Under the view of the Real Parties in Interest ("Real Parties"), the Legislature intended to mandate the specific *scheduling* of meal periods and to require employers to enforce that schedule. Rather than giving employees the option to work through lunch to make it to a late afternoon doctor's appointment, see a child's soccer game, or simply get home a little earlier, employees would be forced to take an unpaid break in the middle of their day, whether they could better use that time at the end of the day or not.

The Legislature never intended such a result. It meant to give employees a right to a meal period, not an obligation to take an unpaid break in the middle of the day when they would rather keep working. A right to free speech does not require speech, a right to the free exercise of religion does not require everyone to be religious, a right to free assembly does not require people to assemble. The right to a meal period does not require that employees be compelled to take that meal period. The holder has the choice whether to exercise the right or not. No one can deny them the right any more than anyone can require them to exercise it.

By requiring employees always to exercise that right, and by casting employers in the role of enforcer, the Real Parties' standard would create an unmanageable, unworkable and unfair predicament. Under Real Parties' mandatory scheduled meal period approach, employers must enforce a collection of illogical and inconsistent rules that make rational

administration impossible. The California Legislature used "provide" to avoid this quagmire, and the California Chapters of the Association of Corporate Counsel urge this Court to adopt and affirm the Labor Code's plain meaning: that employers must make meal periods available to employees and cannot require them to miss them or work through them, but nothing in the Labor Code requires employers to force meal periods on unwilling employees.

I. The California Legislature Adopted the "Provide" Standard.

When the Legislature first decided to make California's meal period rules statutory, it simply stated that employers must "provide" a meal period.

Any statutory analysis must begin with "the words of the statute, 'because they generally provide the most reliable indicator of legislative intent.'" (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103 (*Murphy*), quoting *Hsu v. Abbara* (1995) 9 Cal.4th 863, 871.) Here, the Legislature chose to use the word "provide" -- "to make available for use; supply." (New Oxford American Dictionary). Understanding the impact of this language does not require extensive review of the Industrial Welfare Commission ("IWC") "wage orders" ("the Wage Orders,"[1]) or legislative history. The statute's plain language makes clear the Legislature did not intend to force employees to take meal periods.

The "provide" language maintains a workable and fair standard for employers and employees alike. Employees have a protected right to a meal period, one which employers could not abrogate without financial

[1] The Industrial Welfare Commission orders regulating wages, hours and working conditions in a variety of California industries and occupations may be found beginning at Title 8 California Code of Regulations section 11010. The order applicable in this case, Order 5 regulating the public housekeeping industry, appears at Title 8 Calif. Code of Regulations §11050.

impacts, but one with the flexibility to allow employees to manage their own time. Fair policies and consistent management training under this approach allow employers to manage their workforces effectively.

In contrast, the forced-meal-period approach espoused by Real Parties would create an unworkable, illogical and often self-contradictory standard, denying employees the flexibility section 512[2] meant to give them, and making it administratively impossible for employers to avoid litigation and financial exposure for actions outside their control.

In interpreting a statute, California courts strive to "give meaning to every word and phrase in the statute to accomplish a result consistent with the legislative purpose." (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1159. By asking the Court to interpret section 512 to be a forced-meal-period rule, Real Parties effectively ask the Court to delete the words the Legislature specifically chose.

II. A Forced-Meal-Period Approach Ignores the "Provide" Requirement to Create an Administratively Unworkable System.

Perhaps the most difficult administrative challenge posed by Real Parties' forced-meal-period approach is simply communicating to supervisors and managers that they "provide" rest periods by "authorizing and permitting" employees to take them, but that they do not "provide" a meal period by authorizing and permitting it.

Each Wage Order includes rest break requirements, each stating that employers must "authorize and permit" rest periods. (See, *inter alia*, Wage Order 5, § 12 subd. (A) [8 C.C.R. §11050, ¶12 (A)]). Employers who do not "provide" these rest periods must pay an additional hour of pay to the affected employee. (Wage Order 5, §12, subd. (B)). Under the Wage

[2] All statutory references are to the Labor Code unless otherwise stated.

Order's own provisions, an employer "provides" a rest period by authorizing and permitting employees to take it. Yet, according to Real Parties' forced-meal-period rule, authorizing and permitting a meal break is not "providing" one.

Real Parties' forced-meal-period approach leaves employers, and their counsel and human resource departments charged with developing policies and procedures to comply with the law, in an impossible position. Employers must develop policies and procedures that would explain to line supervisors that "provide" means one thing for rest breaks and another thing for meal breaks.

The Legislature never intended to put employers through such unworkable standards. It adopted a single standard to apply to all employees for rest breaks and meal breaks. Employers must provide the breaks and cannot require any work to be performed during the breaks, but it remains the right of the employee to decide whether to take the break, shorten the break or even skip the break for his or her personal reasons.

III. Real Parties' Forced-Meal-Period Approach Creates an Absurd Motivation for Employees to Miss Meal Periods.

Following the Legislature's plain language and clear intent and applying the provide standard rather than the forced-meal-period standard proposed by Real Parties is the only way to avoid the inherent conflicts the forced-meal-period approach creates. Real Parties' forced-meal-period rule creates a perverse incentive for employees, and leaves employers with only the most draconian of tools to enforce the requirement.

The administrative and logistical problems posed by Real Parties' forced-meal-period standard demonstrate why the Legislature established the "provide" standard. Rather than promoting productive relations between employers and employees, a forced-meal-period approach creates

an atmosphere of conflict in the workplace by directly pitting the economic incentives of employers and employees against one another.

Under Real Parties' forced-meal-period rule, employees have an economic incentive to delay their meal periods. For a regular eight-hour, five-day-a-week employee, skipping meal periods or simply taking meal periods 15 minutes later than required results in the employee receiving an extra five hours of pay a week, a 12.5% pay increase coming from the additional hour of pay owed for a missed-meal-period as mandated by Labor Code section 226.7(b). Employers, with sole responsibility for perfect compliance with the forced-meal-period rule, are left fighting against their employees, with managers required to play enforcer throughout the day to ensure employees do not game the system.

This gaming is most problematic in industries and professions where the employee is not always in a single location and necessarily operates under considerable autonomy. Truck drivers, plumbers, electricians, construction workers, delivery drivers, salespersons, emergency medical technicians, ambulance drivers, trash collectors, gardeners, parking enforcement officers, police, fire, and many other jobs by their very nature require the employee to move around independently addressing the needs of customers and clients.

Other jobs sometimes involve the same level of autonomy because it is the most efficient way for the employer to provide its product or service. Computer support technicians frequently have substantial independence to respond to computer support problems as they arise, sometimes even moving among several local offices in the course of a day or week.

For employees like these, the employer has no practical way to force a meal period at a specified time for a specified duration. The employee is entirely at his or her own discretion to take the meal period as required, and the employer is entirely dependent on the employee's self-reporting about

whether he or she took that meal period or commenced his or her meal period in a timely and compliant fashion.

Real Parties' forced-meal-period interpretation places the employee in a difficult ethical position. By clocking out for a meal 15 minutes late, the employee not only gets his or her meal break, but also an extra hour of pay. By working through the meal period, the employee can get a 12.5% pay increase and get home at least a half hour earlier. Or the employee can comply with the rules, get home later and earn less money. The employee has an incentive to break the rules rather than follow them.

IV. Employers Have No Rational and Proportionate Tools to Enforce Real Parties' Forced-Meal-Period Rule.

Of course, after reviewing time reporting and payroll records, the employer may uncover late or missed meal periods and try to stop the employee's practices, but the tools to do so are either unworkable or unpalatably heavy-handed. The employer could reduce the employee's scheduled workday to five hours or less to avoid meal periods, but this approach dramatically cuts the employee's pay, requires the employer to hire more part-time employees rather than full-time positions that typically include health and other benefits, and makes managing the part-time workforce significantly more difficult.

The employer and employee can sign an on-duty meal period agreement, but in practice, the on-duty meal period rule in a forced-meal-period environment is internally inconsistent. Since the 1998 Wage Orders, the IWC has limited on-duty meal periods: they are permitted "only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to." (Wage Order 5, §11(A) (1998)). In 2000, the IWC added a new requirement to the on-duty meal period rule: "[t]he written

agreement shall state that the employee may, in writing, revoke the agreement at any time." (Wage Order 5, §11(A) (2000)).

These two requirements, that on-duty meals are acceptable only when the job requires it and only when the employee is free to revoke a meal period waiver at any time, make this solution unworkable. Most positions do not ***require*** an on-duty meal period as the Wage Orders define the term. Under Real Parties' forced-meal-period rules, no on-duty meal period arrangement is available for many workers, even if both the employee and the employer want it.

In positions where the job does necessitate an on-duty meal period (*e.g.*, ambulance drivers, EMTs, security guards), the rules are self-contradictory and deny the employee the very control Labor Code section 226.7 was designed to preserve. Under section 226.7(a), no employer can require an employee to work during a meal period without financial penalty. Yet the combined effect of the Wage Orders' on-duty meal period rules leads to just that conclusion. If the nature of the job requires an on-duty meal period, employees who do not agree to an on-duty meal period cannot perform the essential functions of the job. Their failure to agree will lead to the employees losing their jobs. And exercising the right to withdraw consent at any time, as every relevant Wage Order issued since 2000 has required, would lead to the loss of position as well. Under Real Parties' forced-meal period rules, the only time an on-duty meal period can be used is when an employee effectively must agree to it or lose his or her position.

This absurd structure means that employers cannot rely on an on-duty meal agreement to avoid the administrative problems raised by the forced-meal-period rule Real Parties propose. Real Parties' approach leaves employees without the freedom of choice the Labor Code gives them, and leaves employers open to litigation despite their best efforts to

comply with the law. If the position requires on-duty meal periods and an employee withdraws consent, the employer has no choice but to reassign the employee or, if no other position is available, end the employment relationship. But doing so would lead to a wrongful termination suit -- simply for exercising the employee's rights under the Wage Order, he or she suffered an adverse employment action. The only way to avoid these problems is for employers to avoid completely the on-duty meal period rules, again leaving them with the problems administering Real Parties' forced-meal-period rules in the first place.

The employer is then left with full-scale discipline as the only tool to force employees to take meal periods. Informal warnings, formal warnings, and eventually, termination of employment are the only tools left. In the face of an employee taking a meal period 15 minutes late, formal discipline that can lead to termination seems an overreaction, but there is little else to which an employer can resort. This conundrum presents harsh alternatives to the employee: if you take your meal period 15 minutes late, the employer must pay you an hour of premium pay, but you can then be fired.

Proponents of the forced-meal-period approach argue progressive discipline leading to termination is not required because employers can simply pay the one-hour premium. This argument ignores the plain language of section 512. Under that plain language, employers cannot simply decide to pay instead of providing meal periods. "An employer may not employ an employee for...more than five hours...without *providing* a meal period," and "[n]o employer shall require any employee to work during any meal period or rest period mandated by an applicable order of the Industrial Welfare Commission." (Labor Code §§ 512 subd. (a) and 226.7 subd. (a); italics supplied).

Real Parties' forced-meal-period rule effectively deletes "provide" from the statute, when its language makes clear employers cannot opt out

of the meal period requirements simply because they are willing to pay for them. It is clearly unworkable for employers simply to ignore the plain language of the statute to create a forced-meal-period rule the statute never adopts.

Any employer that denies its employees a meal period or requires them to work while eating is violating the law, subject to civil suits for injunctive relief (with the obligation to pay plaintiffs' attorneys' fees), actions by the State Labor Commissioner, or actions under the Labor Code Private Attorneys' General Act for civil penalties. Terminated employees could raise wrongful termination claims. Simply paying for missed meal periods is not an option for employers, and Real Parties cannot point to it as a tool to alleviate the illogical and unworkable aspects of the forced-meal-period rule they propose.

V. Real Parties' Forced-Meal-Period Approach Makes the Wage Order Inconsistencies More Difficult to Administer.

Real Parties' proposed standard also exacerbates the Wage Orders' internal inconsistencies that Section 512 eliminated, inconsistencies that become unworkable, particularly for the on-premises and second meal period rules.

A. Issues with on-premises meal periods

Despite the language of most Wage Orders seemingly permitting employers to adopt an on-premises meal rule, Real Parties' standard would leave employers open to the argument that on-premises meal requirements leave the employee under the employer's control, and therefore amount to an impermissible on-duty meal period. (See *Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal.App.4th 968 [mandated on-premises meal periods cause the employee to remain subject to the employer's control],

disapproved on other grounds in *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557.)

Employers would face this argument even though most Wage Orders state that "[i]n all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated." (Wage Order 5 § 11 subd. (c)).[3] If employers must allow their employees to leave the workplace during meal periods, this provision is entirely unnecessary. Yet it appears in all but four of the Wage Orders. Can employers require on-premises, but off-duty meal periods, or must employers permit employees to leave the premises for the meal period to be valid?

Under Real Parties' forced-meal-period rule, this inconsistency becomes even more difficult to enforce. In an environment where an off-duty but on-premises meal period can subject the employer to a meal period premium, employers that permit their employees to remain on premises during meal periods face the risk of litigation from an employee claiming he or she was told or strongly encouraged to remain on the premises. The only policy option available to employers to avoid these types of claims is to require employees to leave the premises during meals, or to remain exclusively in the designated dining facilities.

Again, under Real Parties' forced-meal-period rule, a provision designed to give freedom of choice to employees becomes a provision that results in less freedom for them. Employees who during their lunch hour want to use the computer at their desk, make some calls or otherwise remain on the premises are restricted from doing so. Employees end up losing freedom rather than gaining it.

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[3] Wage Orders 14 through 17 do not have the on-premises meal-period language.

B. Issues of payroll administration

Not only does the combination of forced meal periods and the ban on an on-premises meal period rule combine to deprive employees of their freedom to use their meal periods as they wish, the combination of the forced meal period rule and the Wage Orders' inconsistent treatment of second meal periods also makes payroll administration unworkable for many employers.

In California, many companies hire outside technical expertise or supplemental workers from staffing companies. These staffing companies provide their clients personnel with the technical expertise or manpower needed but such personnel remain on the staffing company's payroll. Consider a computer technician employed by a staffing company and placed with a client company in the manufacturing industry. A computer crash keeps the technician working two and a half hours past his or her regular eight-hour shift to ensure the client's computer systems are up and running for the morning shift. Already working unscheduled overtime, the technician elects to work through the extra two-and-a half hours to get home earlier rather than stopping to take a second meal break.

Under Real Parties' forced-meal-period rule, the staffing company is in violation of Labor Code section 512, despite the fact that the staffing company is not present to know this non-compliance is occurring, despite the fact that the technician wanted to work through the second meal period, and despite the fact that the technician could easily have taken a second meal period without affecting the manufacturing company.

Yet despite the violation, the staffing company may not have any liability for a meal period premium. The Labor Code provides for a meal period premium only "[i]f an employer fails to provide an employee a meal period or rest period ***in accordance with an applicable order of the***

Industrial Welfare Commission." (Labor Code § 226.7(b) [emphasis added].)

If the technician is covered by Wage Order 4 (staffing companies do not fall under an industrial wage order), the Wage Order does not include second-meal-period language.[4] If the technician is not given a second meal period, no meal premium is due because the applicable ***Wage Order*** did not provide it. But, if the technician is considered an employee in the manufacturing industry, where Wage Order 1 applies, a meal premium is due. Wage Order 1 specifically calls for second meal periods for employees working more than 10 hours in one day. If the technician is covered by Wage Order 1 and is denied a second meal period, he or she is entitled to the missed-meal-period premium.

In Real Parties' forced-meal-period world, the staffing company cannot effectively manage the situation. The employee works at the client site, responds to the client's direction and supervision, and elects to work without a second meal period to get home earlier. If the second meal period is missed, the staffing company is responsible. Yet the staffing company may or may not have liability for the violation, depending on whether Wage Order 1 or Wage Order 4 applies. The Wage Order inconsistency makes this scenario unmanageable for staffing companies.

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[4] Some argue that the Wage Order's requirement that a meal be provided for work periods of more than five hours implicitly includes a second meal period requirement if the employee has worked more than five hours past the first meal period. Labor Code section 512 again corrected this interpretation, making it clear that the five hour work period meant working more than 5 hours "per day." (Labor Code § 512(a)). The rolling meal-period interpretation also would mean the second meal period language included in every Wage Order other than Orders 4 and 5 would be meaningless surplusage. "Interpretations that lead to absurd results or render words surplusage are to be avoided." (*Woods v. Young* (1991) 53 Cal.3d 315, 323.)

But the scenario becomes quite manageable under the Legislature's provide standard. Where the employer's obligation is to provide meal periods, the staffing company can ensure the client manufacturer has the proper policies in place to guarantee employees are provided an off-duty meal period. This approach makes it clear that the technician has the unfettered right to the second meal period, and that he or she can elect to take it or elect to work through the second meal period to finish the job earlier. The employee's freedom of choice is enhanced, and the staffing company can avoid the unfair and unworkable circumstance of being responsible for a violation it cannot control and deciding whether or not there is liability for that violation.

Staffing agencies and any other employer where the workers are arguably covered by Wage Order 4 and a different industry wage order face a similar dilemma. Air rescue services are frequently staffed by registered nurses. Nurses are listed as an occupation covered by Wage Order 4, but the employer is in the transportation industry covered by Wage Order 9. Wage Order 9 includes a second meal period rule; Wage Order 4 does not. Wage Order 4 provides some specific meal period rules for healthcare industry workers; Wage Order 9 does not.

Employees of security service companies that guard client company facilities face a similar dilemma. The security company is not covered by an industrial wage order, so its employees are covered by Wage Order 4, which lists "guards" as one of the covered occupations. Yet an individual security guard may be assigned to guard a retail store covered by Wage Order 7 (Mercantile Industry), or assigned to guard a movie set covered by Wage Order 12 (Motion Picture Industry).[5] The security guard is entitled

[5] The U.S. District Court for Northern California briefly referred to this dilemma in the *McFarland v. Guardsmark, LLC* case. (*McFarland v. Guardsmark, LLC* (N.D. Cal. 2008) 538 F. Supp.2d 1209, fn. 1.) (cont'd)

to a second meal period under Wage Order 7 and Wage Order 12. Wage Order 4 does not provide for a second meal period.[6] Under Labor Code section 512, the movie industry can alter the meal period rules through a collective-bargaining agreement [*see* §512(d)], yet Wage Order 4 contains no provision to permit a collective bargaining agreement to replace its requirements. Administering these contradictory rules in an environment where a single missed meal period results in liability creates an unworkable burden on employers.

VI. Real Parties' Forced-Meal-Period Rule Creates Excessive Damage Scenarios Employers Cannot Control.

The unworkable burden becomes worse when the potential damages from a single violation are examined. Consider the computer technician who decides to work through the second meal period rather than take an unpaid break a half-hour before he or she can go home. The staffing company may not even be aware of this violation until faced with a lawsuit, as much as four years later. If the technician is a former employee at that time, he or she could file suit not only for the hour of premium pay but also for up to 30 days of Labor Code section 203 waiting-time penalties, inaccurate wage statement penalties [*see* §§226(a), (d), and 226.3), and, under the Labor Code Private Attorneys' General Act of 2004, civil

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The court noted that it believed Wage Order 4 would cover security guards, even though the parties argued Wage Order 7 applied. The court did not address the issue in detail because it found that the relevant wage order provisions "appear comparable." (*Id*.) The court did not need to address the question squarely, however, because the dispute involved an interpretation of Labor Code section 512's waiver language rather than the language of the wage orders.

[6] Wage Order 4's section 11(D) refers to certain health care workers' ability to waive "one of their two meal periods," but the Order lacks language mandating a second meal period. *See* 8 C.C.R. §11040 ¶11.

penalties as well [*see* Labor Code Div. 2, Part 13, §2698 *ff*.]. Because the staffing company did not force its technician to take a second meal period, the one-hour of premium pay it may or may not have owed could result in total liability for over 240 hours of pay, plus wage statement and civil penalties. The Legislature did not intend for employers to face such disproportionate penalties.

VII. Conclusion

The Legislature acted to avoid such penalties when it used the "provide" language in Labor Code section 512 and, later, section 226.7. That provide standard gives employees the right to take meal periods, but not the obligation. That standard creates a workable balance for employers and employees alike, a workable balance that cannot exist under the forced-meal-period standard Real Parties endorse.

The plain language of the Labor Code makes it clear employers must give employees the opportunity for an off-duty meal, but does not require employers to force employees to take unpaid meal breaks when an employee does not want them. It prevents employers and employees from working at cross-purposes, and it ensures employers are not faced with contradictory regulations they cannot decipher, enforcement obligations they cannot administer, and financial repercussions they cannot avoid.

The Legislature found an appropriate balance, and the California chapters of the Association of Corporate Counsel respectfully urge the Court to apply that balance and affirm that employers must provide meal periods to their employees, not force employees to take unpaid breaks they may not want.

Dated: August 19, 2009

Respectfully submitted,

JACKSON LEWIS LLP

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Certificate of Word Count

Cal. R. Ct. 8.204 (c) (1)

Counsel for *Amici Curiae* San Francisco Bay Area Chapter, San Diego Chapter, Sacramento Chapter, Southern California ("ACCA-SoCal") Chapter, and Employment and Labor Law Committee of the Association of Corporate Counsel certifies this brief is 5,900 words, according to the word count of the computer program used to prepare this brief.

Dated: August 19, 2009

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Robert M. Pattison

PROOF OF SERVICE (PURSUANT TO CRC Rule 8.520 (5)

I, Belinda Vega, declare that I am employed with the law firm of Jackson Lewis LLP, whose address is 199 Fremont Street, 10th Floor, San Francisco, California 94105; I am over the age of eighteen (18) years and am not a party to this action.

On August 19, 2009, I served the attached **APPLICATION OF CALIFORNIA CHAPTERS and EMPLOYMENT AND LABOR LAW COMMITTEE OF ASSOCIATION OF CORPORATE COUNSEL FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONERS and AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONERS** in this action by placing true and correct copies thereof, enclosed in sealed envelopes addressed as follows:

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Brinker Restaurant Corporation *Petitioner*	Rex S. Heinke Akin Gump Strauss Hauer & Feld, LLP 2029 Century Park E., Ste. 2400 Los Angeles, CA 90067-3010
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[**X**] **BY MAIL**: United States Postal Service by placing sealed envelopes with the postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at San Francisco, California.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct; executed on August 19, 2009, at San Francisco, California.

_____

Belinda Vega