

**S 166350**

**IN THE SUPREME COURT OF THE  
STATE OF CALIFORNIA**

**BRINKER RESTAURANT CORPORATION, BRINKER  
INTERNATIONAL, INC. and BRINKER INTERNATIONAL  
PAYROLL COMPANY, L.P.,**

*Petitioners,*

v.

**SUPERIOR COURT OF 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.*

**PETITION FOR REVIEW OF A DECISION OF THE COURT OF APPEAL  
FOURTH APPELLATE DISTRICT, DIVISION ONE, CASE NO. D049331,  
GRANTING A WRIT OF MANDATE TO THE SUPERIOR COURT  
FOR THE COUNTY OF SAN DIEGO, CASE NO. GIC834348  
HONORABLE PATRICIA A.Y. COWETT, JUDGE**

**APPLICATION OF CHILDRENS HOSPITAL LOS ANGELES  
FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF, AND  
*AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONERS  
BRINKER RESTAURANT CORPORATION, BRINKER  
INTERNATIONAL, INC. and BRINKER INTERNATIONAL  
PAYROLL COMPANY, L.P.**

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**APPLICATION AND STATEMENT OF INTEREST OF  
AMICUS CURIAE CHILDRENS HOSPITAL LOS ANGELES  
(Cal. Rules of Court, rule 8.520)**

**Amicus Curiae Identification and Background**

Amicus Curiae Childrens Hospital Los Angeles seeks leave to file this amicus brief in support of petitioners Brinker Restaurant Corporation, Brinker International, Inc., and Brinker International Payroll Company, L.P., pursuant to California Rules of Court, rule 8.520.

Childrens Hospital Los Angeles is a non-profit, academic medical center affiliated with the Keck School of Medicine of the University of Southern California. On June 17, 2009, U.S. News and World Report named Childrens Hospital Los Angeles in its "Honor Roll," as one of only 10 children's hospitals in the nation – and the only pediatric medical center west of Denver – ranked in all listed pediatric specialties.

Childrens Hospital Los Angeles has been serving the community since 1901. It currently:

- Treats more than 62,000 children a year in its emergency room
- Operates one of the largest dedicated neonatal/pediatric transport programs in the nation
- Admits more than 11,000 children a year to the hospital, with almost 50-percent being children under the age of five

- Triages more than 287,000 visits a year in its 29 outpatient clinics and laboratories
- Performs more than 13,900 pediatric surgeries a year
- Maintains the only dedicated, separately staffed pediatric cardiothoracic intensive care unit on the west coast
- Provides 35 pediatric critical care beds, more than at any other hospital in the western United States
- Takes the sickest and the poorest of children, approximately 74% of patients are Medi-Cal beneficiaries.

Childrens Hospital Los Angeles is one of only 20 hospitals in California certified as a "Magnet Hospital," by the American Nurses Credentialing Center of the American Nurses Association, a professional organization representing the interests of the nation's 2.9 million registered nurses.

The hospital employs over three thousand non-exempt workers, including many highly trained and licensed medical care workers.

**Applicant's Interest**

Childrens Hospital Los Angeles's interest in this case is that (1) it is a California employer whose patients, employees, and operations overall will be affected by this Court's opinion, and (2) it has a pending appeal in the Second Appellate District, *Palazzolo v. Childrens Hospital Los Angeles*, B 216508,

involving the granting of summary judgment in favor of Childrens Hospital Los Angeles that includes some of the same issues.

**How the Proposed Amicus Brief will Assist this Court**

Childrens Hospital Los Angeles seeks leave to file this amicus brief to provide information of substantial assistance to this Court in resolving the important California wage/hour issues this Court has agreed to review. This brief addresses the issues before this Court from the practical perspective of a hospital employer, specifically focusing on the arguments of Real Parties in Interest/Plaintiffs (“Plaintiffs”), which raise the following issues:

1. Plaintiffs’ arguments, if accepted by this Court, will increase risks to **patient care** by increasing patient/staff ratios and forcing patient hand-offs at less than optimal times,

2. Plaintiffs’ arguments, if accepted by this Court, will compromise the **professional obligations of independently licensed hospital employees** – such as nurses, social workers, and respiratory, physical and occupational therapists, and

3. Plaintiffs’ arguments, if accepted by this Court, will increase **healthcare costs** because of the need to hire more staff and increased litigation.

**Authors And Funders Of Brief.**

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The following entity made a monetary contribution to fund the brief:


Beta Healthcare Group, the employment liability insurer for  
Childrens Hospital Los Angeles

August 17, 2009

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**AMICUS CURIAE BRIEF OF CHILDRENS HOSPITAL LOS  
ANGELES IN SUPPORT OF PETITIONERS BRINKER  
RESTAURANT CORPORATION, BRINKER  
INTERNATIONAL, INC. and BRINKER INTERNATIONAL  
PAYROLL COMPANY, L.P.**

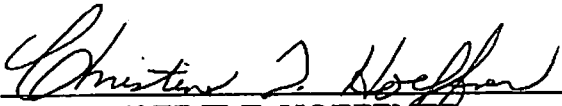
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**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**  
**(Cal. Rules of Court, Rule 8.208)**

*Amicus Curiae* Childrens Hospital Los Angeles is a non-profit public benefit corporation, with its principal place of business in the State of California, and is licensed to do business in California. It has no parent corporation and there are no other companies owning a 10% or more interest in it. It is contractually affiliated with the University of Southern California and Childrens Hospital Los Angeles Medical Group. Childrens Hospital Los Angeles knows of no other entity or person that must be listed under Rule 8.208 subdivisions (1) or (2).

Dated: August 17, 2009      BALLARD ROSENBERG GOLPER &  
SAVITT LLP

By   
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**AMICUS CURIAE BRIEF OF CHILDRENS HOSPITAL LOS ANGELES**

**SUMMARY OF BRIEF**

Childrens Hospital Los Angeles is a non-profit, academic medical center affiliated with the Keck School of Medicine of the University of Southern California serving the community and the world with distinction since 1901.

Childrens Hospital Los Angeles, its patients, its employees, and its operations will be negatively impacted if this Court adopts the position of Real Parties in Interest/Plaintiffs (“Plaintiffs”) that California employers must (1) guarantee their employees stop work for meal and rest breaks or else be strictly liable for any that are missed, and (2) require that meal periods be taken during or no later than the fourth or fifth hours of the workday. (See Opening Brief on the Merits (“OBM”) pp. 4, 27-29, 34, 49, 62, 81-89, 92, 94; Reply Brief on the Merits (“RBM”) pp. 4-32.)

Childrens Hospital Los Angeles does not contest the importance of meal and rest breaks, nor does it seek to avoid paying supplemental wages for missed breaks. Childrens Hospital Los Angeles does argue, however, that imposing a legal standard requiring California employers to ensure meal and rest breaks are taken – and administered with unforgiving and rigid standards requiring breaks at specific times – would adversely affect

patient care, place nurses and other licensed professionals in a compromised position with their own licensing boards, and increase healthcare costs.

**Patient Care.** Childrens Hospital Los Angeles asks this Court to be mindful of differences among industries as it considers these matters. A hospital is often the largest employer, or among the largest employers, in a community. In contrast to some employers, where work can be suspended during meal and rest breaks with little to no adverse effect, hospitals cannot suspend their obligation to care for patients admitted to their facilities. If, for example, an hourly wage nurse in the intensive care unit takes a meal or rest break, the hospital cannot stop work as Plaintiffs argue. Even in non-critical care environments, diluting nurse/patient ratios during breaks can compromise care. Finally, no matter how diligent the caregivers, there is an inherent risk every time there is a change in the personnel caring for a patient. Plaintiffs' demand for rigid and inflexible breaks will increase these risks.

**Employee Legal Obligations to their own Licensing Boards.**

Many of the hourly workers at Childrens Hospital Los Angeles are independently licensed professionals, including registered nurses, licensed vocational nurses, occupational therapists, respiratory therapists, and physical therapists. They are licensed by State Boards such as the

California Board of Registered Nursing, the California Board of Psychology, the California Board of Behavioral Sciences, and the Physical Therapy Board of California. In short, they owe direct duties to their patients that must be balanced against their agreement with their employer for both to adhere to wage and hour laws.

**Healthcare Costs.** Typical of most hospitals, Childrens Hospital Los Angeles spends approximately 55% of its operating budget on personnel costs. Faced with massive numbers of uninsured patients and the traditional role of a children's hospital as the local provider for the poor, Childrens Hospital Los Angeles would be stretched to find the resources to satisfy the rigid meal and rest break mandates the Plaintiffs would place on employers, even assuming additional qualified personnel were available for hire.

Hospitals are favorite wage/hour class action targets, with 24-hour-a-day shifts and large numbers of employees. They are often the largest employers in their communities. When class action plaintiffs claim that meals were not "ensured", "monitored", "recorded", or given at the "right time," this creates enormous potential exposure. Plaintiff classes take the number of employees, multiplied by the number of days worked (usually over at least a four year period), and multiplied by the hourly overtime rates

plus daily statutory premiums for each allegedly missed, early, or late break. Significant statutory penalties for not timely paying wages are then piled on, and the final topping is an award of attorneys' fees. The basic math for wages alone quickly translates into millions of dollars for even small hospitals with only 1000 hourly employees who work 14 -20 shifts a month. Add statutory penalties plus attorney fees to that figure and the potential liability rises dramatically.

Additionally, defendants often face hundreds of thousands of dollars in discovery expenses even before a class is certified and before there is any evidence supporting the merits of any claim.<sup>1</sup> Most wage/hour cases end in large settlements due to the enormous expense of defending against them and the fear and risk of a devastating judgment based on vague statutes and large statutory penalties. Liability insurance generally excludes indemnity and defense costs for these claims.

In the past year alone California hospitals have paid well over \$100 million to settle wage/hour class actions. This adds to rapidly increasing

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<sup>1</sup> Class discovery frequently results in employers having to produce volumes of private information about employees, including contact information, salary and wage statements, and timecards of all putative class members. The cost of producing this information for thousands of employees covering multi-year periods can be extremely expensive and disruptive to an employer's administrative operations.

medical costs.

Plaintiffs' arguments, if adopted by this Court, would have serious negative repercussions on the healthcare industry generally, and on Childrens Hospital Los Angeles specifically.

## ARGUMENT

### **I. Plaintiffs' Arguments, If Adopted, Will Increase Risks to Patients.**

Plaintiffs ask this Court to interpret meal period statutes to require that employers:

- “must actually relieve workers of all duty” (OBM at p. 4),
- must “ensure that work stops for the required thirty minutes and that the employee is free to engage in personal activities” (*id.* at p. 28),
- must “take affirmative steps to ensure that workers are relieved of duty for thirty minutes” (*id.* at p. 62),
- should allow employees “to close down their workstations during lunch” or be given coverage (*id.* at p. 29).

Plaintiffs argue meal periods should be administered as absolutes and that employees are entitled to a conclusive presumption of a violation –

to a wage plus a wage premium<sup>2</sup> and penalties<sup>3</sup> – for every unrecorded meal. Plaintiffs also argue the statutes “impose a [meal] timing requirement” during the fourth or fifth hour of work such that an early or late meal is the same as no meal.<sup>4</sup> (OBM pp. 4, 27-29, 34, 49, 62, 81-89, 92, 94; RBM pp. 4-32.)

California courts have traditionally avoided interfering with complex management of hospitals, respecting the expertise and dedication of administrators and clinicians.<sup>5</sup> Plaintiffs’ interpretation of the meal period

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<sup>2</sup> In addition to receiving hourly wages, including overtime pay for a missed break, an additional “premium” of one hour of pay is required for each day that an employee misses a break. (Lab. Code, § 226.7.)

<sup>3</sup> Significant penalties are also claimed by plaintiffs for untimely payment of wages. (Lab. Code, §§ 203, 226 subd. (e).)

<sup>4</sup> The Court of Appeal here found no restriction on the timing of meal periods. (*Brinker Restaurant Corporation v. Superior Court* (2008) 165 Cal.App.4th 25, rev. granted, S166350, Slip Op. p. 8-10, 16, 40.) In another case, also pending on review before this Court, the Court of Appeal rejected the plaintiff’s argument that meals must be provided within the first five hours worked. (*Brinkley v. Public Storage, Inc.* (2008) 167 Cal.App.4th 1278, rev. granted, S168806 [“Plaintiff argues that California law requires defendant to provide meal periods within the first five hours of a shift. We disagree. Nothing in the applicable statutes or wage order supports plaintiff’s position”], Slip Op. p. 9.)

<sup>5</sup> “An important public interest exists in preserving a hospital’s ability to make managerial and policy determinations and to retain control over the general management of the hospital’s business.” (*Mateo-Woodburn v. Fresno Community Hospital & Medical Center* (1990) 221 Cal.App.3d 1169, 1184-1185; see also *Lewin v. St. Joseph Hospital of Orange* (1978) 82 Cal.App.3d 368, 385.)



statute asks this Court to impose rigid meal period rules in a way that would directly affect and interfere with patient care.

**Hospital work cannot be stopped for breaks.** Hospitals cannot suspend their obligation to care for patients admitted to their facilities. Patients present conditions of varying levels of urgency, but in order to be admitted, all in-patients are seriously ill and require attention 24 hours a day. A hospital cannot ensure, as the Plaintiffs would have it, that all “work stops” during meal and rest breaks. (OBM, p. 28.)

**Diluting nurse/patient ratios is dangerous to patients.** The requirement for immediate attention is obvious in intensive care units, post-operative recovery rooms, and emergency departments, among other units of a hospital. Even in non-critical care environments, however, diluting nurse/patient ratios for the purpose of mandating meal and rest periods can harm patient care.<sup>6</sup> Allowing nurse/patient ratios to temporarily

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<sup>6</sup> National Advisory Council on Nurse Education and Practice (NACNEP), Sixth Annual Report to the Secretary of the U.S. Department of Health and Human Services and the U.S. Congress, “Meeting the Challenges of the New Millennium,” (January 2008), p. 6; U.S. Department of Health and Human Services website, <http://bhpr.hrsa.gov/nursing/NACNEP/reports/sixth/default.htm>, <ftp://ftp.hrsa.gov/bhpr/nursing/sixth.pdf>.

decrease during breaks may also violate California legislatively mandated staffing ratios.<sup>7</sup>

**Forcing abrupt transfers of patients among hospital staff places patients at risk.** Studies have shown that one of the most frequent causes of patient care errors is a poorly executed transfer of a patient from one care giver to another, often called a “hand-off”.<sup>8</sup> Transfers are necessary in a modern hospital as shifts change, interns and residents rotate through services, and members of the hospital’s staff communicate with one another. Recognizing the inherent danger of a failure in communication during so-called hand-offs, conscientious care givers take great care in the process. Nonetheless, all hand-offs involve risks. Whenever there is a change in the care provider, there is a potential risk no matter how diligent the hand-off may be. Plaintiffs’ argument for a rigidly proscribed time for

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<sup>7</sup> Hospital staffing levels are based on a complex analysis of constantly shifting patient census and acuity levels; the patient to staff ratio and staffing level is constantly monitored and adjusted 24 hours a day based on state regulations for staffing levels. (Health & Saf. Code, § 1276.4; Cal. Code Regs., tit. 22, § 70217.)

<sup>8</sup> The Joint Commission, Joint Commission International, and World Health Organization, “Communication During Patient Hand-Overs”, Patient Safety Solutions, vol. 1, solution 3, (May 2007) pp. 1-2 (fns. omitted); World Health Organization website, <http://www.who.int/patientsafety/solutions/patientsafety/PS-Solution3.pdf>.

meal periods may contribute to transfers at clinically inappropriate moments and abrupt, poorly executed “hand-offs.”

**II. Plaintiffs’ Arguments, If Adopted, Will Compromise the Professional Obligations of Independently Licensed Hospital Employees.**

Plaintiffs insist there is a need to “protect the most vulnerable of California workers” - those who “dare not speak up”. (OBM p. 73.) Plaintiffs argue that employees should not be allowed any discretion to postpone or forego breaks. Plaintiffs also argue that workers’ rights are diminished if an employee is only allowed a meal period instead of employers ensuring and monitoring them. Yet Plaintiffs’ position diminishes the authority of hospital employees.

Many hourly hospital employees, including nurses<sup>9</sup> and respiratory therapists, are healthcare professionals who hold independent licenses that impose specific statutory duties and responsibilities that must co-exist with the direction given to them by their employers and the patients’ attending physicians.<sup>10</sup>

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<sup>9</sup> In California, registered nurses, along with many other licensed and highly skilled medical care workers, are non-exempt workers who are entitled to overtime pay and the wage premium benefits of the meal and rest break statutes, even though they have independent professional duties. (See Lab. Code, § 515 subd. (f).)

<sup>10</sup> See *Finnerty v. Board of Registered Nursing* (2008) 168 Cal.App. 4th 219, 227-229, quoting Cal. Code Regs., tit. 16, § 1443.5, subd. (6).

Plaintiffs claim that employee and public safety needs mandate imposing a rigid set of rules for the timing of meal and rest breaks. Yet Plaintiffs' proposed interpretation would deny healthcare workers the ability to determine when it is appropriate to leave their patients for breaks. This is inconsistent with good patient care and healthcare employees' professional license obligations.

Plaintiffs nevertheless insist that meal period requirements are absolute, comparing them to minimum wage laws and statutory mandates for toilets. (OBM p. 56-57.) But the minimum wage statute is specific and allows no employee waivers, unlike the meal period statute which has express provisions for meal waivers<sup>11</sup> and provides a premium wage payment for missed meals<sup>12</sup>. And while toilets must be provided, no statute requires that employers "ensure" and "monitor" their use. Nor should

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<sup>11</sup> Employees may waive meal periods if their workday is six hours, or waive their second meal period if they work over 10 hours (by waiving a meal, employees may shorten their work day). (Lab. Code, § 512 subd. (a); Industrial Welfare Commission ("IWC") Order No. 5-2001, ¶ 11(A); IWC Order No. 4-2001, ¶ 11(D).) Some hospital employees work 12-hour shifts and elect to waive the second meal and take only one meal period, preferring to take it in the middle of the shift – at the sixth or seventh hour – not during the fourth or fifth hour. Plaintiffs' statutory interpretation would require these employees to take their meal periods during the fourth or fifth hours, and to work another seven or eight hours without a meal.

<sup>12</sup> Lab. Code, § 226.7; *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1099, 1104-1114, 1119.

employers be required to ensure or monitor meal periods.

If the legislature believed that employee health and safety mandated absolute meal periods rigidly timed during the fourth and fifth hours of work, it would *not* have allowed meal period waivers, and it would have imposed a definitive penalty for every missed break instead of providing only for an additional wage. (See *Murphy v. Kenneth Cole Productions, Inc.*, *supra*, 40 Cal.4th at p. 1119 [the additional hour of pay that must be paid for a missed break “is a premium wage, not a penalty.”])

### **III. Plaintiffs’ Arguments, If Adopted, Will Increase Healthcare Costs.**

Plaintiffs argue that by definition, when employees miss meal or rest breaks it is because employers hire inadequate numbers of staff. (OBM p. 71.) Plaintiffs theorize that employers can just “correct what caused the [missed break]” (*id.* at p. 29) by spending money – simply procure more: more supervisors to monitor and ensure breaks are taken, more nurses and other professionals to work when others are on break, and more cash to pay for missed or untimely breaks.

**Shortages of staff and funding.** Additional staff is not always available at any price. Nursing shortages are common. During the current economic downturn there have been reports of nurses returning to work or postponing retirement, but this is merely a temporary respite; long term

projections show there will be a chronic shortage of qualified nurses.<sup>13</sup>

Children Hospital Los Angeles already struggles to locate enough qualified workers.

Even assuming sufficient additional healthcare staff were available, additional funding is not. Childrens Hospital Los Angeles is a safety net facility, taking the sickest and the poorest of children. Approximately 74% of the patients of Childrens Hospital Los Angeles are Medi-Cal beneficiaries, and it is widely recognized that Medi-Cal pays far less than its fair share of caring for children. Year-after-year, philanthropy and wisely invested endowments are called upon to compensate for operational deficits at Childrens Hospital Los Angeles, but these traditional back-stops have suffered along with everything else during the current economic downturn. While some facilities can simply close the gap between expenses and income by raising their rates, not all hospitals are positioned to do this. With Childrens Hospital Los Angeles treating so many patients on Medi-Cal, it cannot simply fund more staff by raising rates.

**Increased staffing expenses.** Even if a hospital could afford to increase staffing, and assuming there were sufficient trained staff statewide

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<sup>13</sup> NACNEP, "Meeting the Challenges of the New Millennium," *supra*, at pp. 7, 9, 11.

for all hospitals to maintain higher staffing levels, this would result in a significant increase in the cost of healthcare. Approximately 55% of the Childrens Hospital Los Angeles annual operating expenditures reflect wages. This is comparable to other hospitals in California, which, in 2007, paid 52% of their operating expenses in the form of salary and benefits. Greater expenditures for wages will cause many hospitals to raise their rates, which will fuel healthcare inflation.

Adding to this burden is the increased administrative cost that would result from Plaintiffs' argument that employers must record all meal periods themselves, or else face monumental class action exposure. (OBM pp. 71, 75.) Many employees work independently or outside of a central workplace, such that employers cannot simply record this information. Many employers must rely on and require their employees to record their start and stop times and meal periods.

Regulations do not state that *employers* must record this information, but rather, that the employer must "keep accurate information with respect to each employee"; which includes "[t]ime records showing when the employee begins and ends each work period. Meal periods . . . shall also be recorded." (Cal. Code Regs., tit. 8, § 11050, subd. 7(A)(3).) Employers often rely on employee prepared timecards to meet these requirements

because managers are not present to record this information. But Plaintiffs assert this is noncompliant and entitles employees to a conclusive presumption of a violation for every “unrecorded” meal – and they multiply the number of “unrecorded” meals for each employee by the hourly wage/overtime and the one hour wage premium, and add statutory penalties for delayed payment of wages, and attorneys fees.

Plaintiffs’ proposals, if accepted, mean that hospitals would now be required (1) to hire additional supervisors to be present not only to enforce and monitor all meal periods, but also to record each employee’s meal period, and (2) to hire and maintain a duplicate healthcare staff to relieve workers to ensure that all employees would get undisturbed meal and rest breaks at specific times, regardless of medical emergencies. The cost of complying would be financially burdensome in hospitals such as Childrens Hospital Los Angeles, where these added expenses could not simply be passed on to patients.

**Increased litigation expenses.** Plaintiffs’ proposals, if adopted, will result in additional and extremely costly class actions seeking hourly wages for every “missed” “unrecorded”, “early”, and “late” meal period, plus wage premiums, wage penalties, and attorney fees.



## CONCLUSION

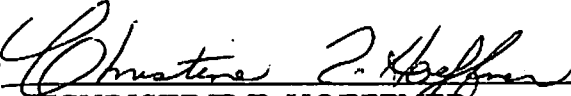
Plaintiffs' interpretation of the meal and rest break statutes as requiring employers to guarantee these breaks and ensure they are taken at specific times, or else face absolute liability for every violation, would impose mandates that, in the hospital industry, would be harmful to patient healthcare workers, and the public interest in controlling healthcare and preventing patient care errors.

The timing of meal periods has traditionally been left to employers and employees to decide, especially in hospitals where there are complex and rapidly changing demands of critically ill patients. This offers the most reasonable, flexible, and productive interpretation of the meal period statutes.

For all of these reasons, *Amicus Curiae* Childrens Hospital Los Angeles requests that the judgment of the Court of Appeal be affirmed.

August 17, 2009

Respectfully submitted,  
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**CERTIFICATE OF WORD COUNT**  
**(Cal. Rules of Court, rule 14(c)(1))**

The text of this brief consists of 3151 words as counted by the Corel  
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Dated: August 17, 2009

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## DECLARATION OF SERVICE

Case Name: *Brinker Restaurant Corporation v. Superior Court of the State of California for the County of San Diego*

California Supreme Court Case No.: S 166350

I am a citizen of the United States, and am employed in the County of Los Angeles in the office of a member of the bar of this Court at whose directions this service was made. I am over the age of 18, and not a party to the within action. My business address is Ballard Rosenberg Golper & Savitt, LLP, 500 North Brand Boulevard, Twentieth Floor, Glendale, California 91203-9946.


On August 17, 2009, I served the foregoing document described as:

**APPLICATION OF CHILDRENS HOSPITAL LOS ANGELES FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF, AND *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONERS BRINKER RESTAURANT CORPORATION, BRINKER INTERNATIONAL, INC. and BRINKER INTERNATIONAL PAYROLL COMPANY, L.P.**

on the interested parties in this action, by placing a true copy thereof in a sealed envelope addressed to each person and/or entity shown on the attached Proof of Service list.

X (BY MAIL) and personally placing such envelope with postage fully prepaid for collection and mailing on the above-referenced date following the ordinary business practices of this office. I am readily familiar with our office's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence, including said envelope, will be deposited with the United States Postal Service at Glendale on the above-referenced date.

I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of California. Executed on August 17, 2009, at Glendale, California.

  
Lecia Battle-Green

Proof of Service List: Page 1 of 2

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