

DOCKET NO.: X03-HHD-CV17-6088349-S	:	SUPERIOR COURT
	:	
JACQUELINE RODRIGUEZ,	:	JUDICIAL DISTRICT OF
Individually on behalf of all others	:	HARTFORD
similarly situated	:	
	:	
V.	:	
	:	
KAIAFFA, LLC d/b/a CHIP’S FAMILY	:	FEBRUARY 15, 2019
RESTAURANTS et al.	:	

**APPLICATION OF THE CONNECTICUT RESTAURANT ASSOCIATION, INC. AND
THE RESTAURANT LAW CENTER
TO APPEAR AS AMICI CURIAE AND TO FILE BRIEF**

In accordance with the Connecticut Supreme Court’s ruling in *Thalheim v. Town of Greenwich*, 256 Conn. 628 (2001), and with guidance found in relevant portions of Practice Book § 67-7, the Connecticut Restaurant Association, Inc. (“CRA”) and the Restaurant Law Center (“Law Center”) hereby respectfully apply for permission of the court to appear as amici curiae and to file an amici brief in support of Kaiaffa, LLC d/b/a Chip’s Family Restaurants and George Chatzopoulos (“Defendants”) Motion for Summary Judgment (Doc. 158) and Defendants’ Memorandum in Opposition to Plaintiff’s Motion for Summary Judgment (Doc. 157) in the above-captioned matter.

I. HISTORY OF THE CASE

In this case, Plaintiff, Jacqueline Rodriguez (“Plaintiff”), alleges that she and every server working at Defendants’ six restaurants performed “non-service” duties by doing “side work,” and that she and others were not paid the full minimum wage rate for that work in violation of the Connecticut Minimum Wage Act and Conn. Agencies Regs. § 31-62-E1 *et seq.*, between October 25, 2015 and March 1, 2018. (Am. Compl. ¶¶ 1-13, Doc. 145.) As the CRA and Law Center see it, Plaintiff’s claim in the case turns on the interpretations accorded to the terms “service” duty, duty “incidental” to such service, and

“non-service” duty, and where server “side work” falls within those interpretations. Plaintiff contends all “side work” is a “non-service” duty that must be paid at the full minimum wage rate, while Defendants contend that the “side work” it assigned was a “service” duty or a duty “incidental” to such service which was properly paid at the tip credit wage rate. Defendants deny Plaintiff’s allegations (Answer to Am. Compl., Doc 149) and believe the evidence and law are clear that the Plaintiff and other servers only performed “service” duties and duties “incidental” to such service, in compliance with Conn. Agencies Regs. §§ 31-62-E2(c) and 31-62-E4. Defendants also assert that the terms “service” and “non-service” duties in Conn. Agencies Regs. § 31-62-E4, which covers diversified employment, refer to occupations and not discrete tasks in the restaurant industry, and that there is no dispute that Plaintiff’s time was properly segregated during her employment. As the CRA and Law Center see it, the key issue in the case is whether the Plaintiff performed “non-service” duties when she performed the assigned “side work.” Plaintiff has moved for summary judgment (Doc. 150). Defendants have opposed Plaintiff’s motion for summary judgment (Doc. 157) and have cross-moved for summary judgment (Doc. 158).

II. NATURE OF APPLICANTS’ INTEREST AND REASONS WHY APPLICANTS SHOULD BE PERMITTED TO FILE BRIEF

The CRA is a nonprofit trade association dedicated to supporting every type and size of restaurant in Connecticut. The Restaurant Law Center is an independent public policy organization providing a voice for the restaurant and foodservice industry in the courts. Nationally, the industry is comprised of over one million restaurants and other foodservice outlets employing more than 15 million people—approximately ten percent of the U.S. workforce. (National Restaurant Association, Restaurant Industry Facts at a

Glance, <https://restaurant.org/research/restaurant-statistics/restaurant-industry-facts-at-a-glance> (last visited February 11, 2019).) The restaurant and foodservice industry is the nation's second largest private-sector employer. Despite its size, small businesses dominate the industry. Connecticut's restaurant industry served food and beverage at 7,941 locations in 2016 and provided 157,000 restaurant and food service jobs in 2018, roughly 9% of total employment in the state. (National Restaurant Association, Connecticut Restaurant Industry at a Glance, www.ctrestaurant.org/ct-restaurant-industry.html (last visited January 16, 2019).) Connecticut's restaurant industry is projected to have continued growth over the next decade. *Id.* This case concerns a legal issue of great importance to the Law Center, the CRA, its members, and their businesses: the interpretation of regulations relating to the payment of the tip credit wage rate for "side work" performed by service employees and diversified employees.

The CRA represents thousands of member restaurants in Connecticut, and the Law Center seeks to provide courts with the industry's perspective on legal matters meaningfully impacting the industry. As such, the CRA and the Law Center are well positioned to brief the issue of server "side work," including whether "side work" is a "service," "incidental," or "non-service" duty and the proper payment of wages for that "side work" under current law. Further, the CRA and the Law Center have an interest in ensuring that restaurants in Connecticut will not be unexpectedly and adversely impacted by a sea change in the interpretation of state regulations pertaining to service and diversified employment. Plaintiff's interpretation of applicable regulations would require restaurants to pay service employees and diversified employees at the full minimum wage rate for any and all side work performed throughout their shifts. Plaintiff's interpretation

would also effectively turn all service employment into diversified employment, thereby increasing the administrative burden on restaurants for tracking, segregating, and recording “service” and “non-service” duty time. For some restaurants, this increased burden would override the utility derived from the tip credit wage rate and favor the payment of the full minimum wage to all service and diversified employees at all times. Such a shift will have real consequences: it will increase restaurant overhead, it will result in the assessment of service charges on patrons, and it will decrease overall earnings for service and diversified employees. The CRA and the Law Center believe their participation as amici curiae in this matter will be of assistance to the Court, because they can offer insights on the broader industrial implications of Plaintiff’s proposed interpretation that all “side work” is a “non-service” duty.

III. LEGAL GROUNDS SUPPORTING APPLICATION

Although there is no specific Practice Book section pertaining to the filing of an amici curiae brief in the Superior Court, Practice Book § 67-7, which governs appellate procedure relating to amicus curiae, provides relevant guidance. *Thalheim*, 256 Conn. at 646. Case law also supports the utilization of amicus curiae briefs in the Superior Court. The Connecticut Supreme Court recognized that amicus curiae briefs are not prohibited in the Superior Court. *See Thalheim*, 256 Conn. at 640. Rather, the appearance of an amicus curiae and permission to file an amicus brief rest “within the sound discretion of the court.” *Id.* at 644. “[T]he fact, extent and manner of an amicus curiae’s participation is entirely *within the court’s discretion* and an amicus curiae may ordinarily *be heard only by leave of the court.*” *Id.* (quoting 4 Am.Jur.2d, Amicus Curiae § 3 (1995)). There are no specific prerequisites for granting amicus curiae status, but in considering an application

for status courts generally will determine if the information offered is “timely, useful or otherwise necessary to the administration of justice.” *Id.* at 645 (quoting 4 Am.Jur.2d, Amicus Curiae § 3 (1995)).

The purpose of an amicus curiae has been summarized by the Connecticut Supreme Court:

Historically, amicus curiae was defined as one who interposes in a judicial proceeding to assist the court by giving information, or otherwise, or who conducts an investigation or other proceeding on request or appointment therefor by the court. Its purpose was to provide *impartial* information on matters of law about which there was doubt, especially in matters of public interest. The orthodox view of amicus curiae was, and is, that of an *impartial* friend of the court-*not an adversary party in interest in the litigation*. The position of classical amicus in litigation was not to provide a highly partisan account of the facts, but rather to aid the court in resolving doubtful issues of law.

State v. Ross, 272 Conn. 577, 612 (2005) (emphasis in original; quoting *United States v. Michigan*, 940 F.2d 143, 164-65 (6th Cir.1991)).

Pursuant to such purposes, Superior Courts in Connecticut have permitted the appearance of amicus curiae in a variety of matters. See, e.g., *Patino v. Birken Mfg. Co.*, No. CV054016120S, 2009 WL 1624365 (Conn. Super. Ct. May 15, 2009), *aff'd*, 304 Conn. 679, 41 A.3d 1013 (2012)(Connecticut Employment Lawyers' Association and the Lambda Legal Defense and Education Fund, Inc. were permitted to file amicus curiae briefs in matter concerning interpretation of General Statutes § 46a-81c); *Lantz v. Coleman*, No. HHDCV084034912, 2010 WL 1494985 (Conn. Super. Ct. Mar. 9, 2010)(four law school professors were permitted to file amicus curiae brief in support of defendant in case that raised the question of whether the state may force feed an inmate who is engaged in a hunger strike as a form of protest); *Bysiewicz v. DiNardo*, No. HHD-CV-10-6008194S, 2010 WL 1838604 (Conn. Super. Ct. May 5, 2010), *rev'd*, 298 Conn.

748, 6 A.3d 726 (2010)(Chief Disciplinary Counsel was permitted to file amicus brief in matter where candidate for Attorney General sought declaratory judgement of eligibility); *A. Gallo & Co. v. McCarthy*, No. CV094043592S, 2011 WL 590900 (Conn. Super. Ct. Jan. 26, 2011) (American Beverage Association was permitted to file an amicus curiae brief in support of the plaintiffs' motion for summary judgment on case involving taking of property via Public Act on unclaimed beverage container deposits); *Connecticut Historical Comm'n v. Wallingford*, No. CV020468446S, 2011 WL 1087088 (Conn. Super. Ct. Feb. 22, 2011)(permitting Connecticut Trust for Historic Preservation, Inc. to appear and participate as amicus curiae in matter concerning permanent injunction to prevent demolition of historic structure).

Allowing the CRA and the Law Center to appear as amici curiae and to file an amici brief will assist this Court in resolving the legal issues raised by Plaintiff's claim. The amici brief will provide an impartial review and assessment of Connecticut's current laws pertaining to "service," "incidental," and "non-service" duties; service and diversified employees; "side work;" and the payment of the tip credit wage rate for "side work" performed. The analysis will also explain the consequences for Connecticut's restaurant industry if Plaintiff's interpretation of the law is accepted by the court. If granted amici curiae status, the CRA and Law Center are prepared to file their brief within 21 days.

IV. CONCLUSION

WHEREFORE, the CRA and the Restaurant Law Center respectfully apply for permission to appear as amici curiae in the above-captioned matter and to file a brief in support of Defendants' Motion for Summary Judgment (Doc. 158) and Defendants' Memorandum in Opposition to Plaintiff's Motion for Summary Judgment (Doc. 157).

**CONNECTICUT RESTAURANT
ASSOCIATION, INC. AND
RESTAURANT LAW CENTER**

By: 
Tiffany N. Tisler
Michael J. Spagnola
Siegel, O'Connor, O'Donnell & Beck, P.C.
150 Trumbull Street
Hartford, CT 06103
Tel.: (860) 727-8900
Fax: (860) 527-5131
ttisler@siegeloconnor.com
mspagnola@siegeloconnor.com
Juris No. 057730

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Application of the Connecticut Restaurant Association, Inc. and the Restaurant Law Center to Appear as Amici Curiae and to File Brief will immediately be mailed or delivered electronically or non-electronically on February 15, 2019 to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who will immediately be served:

Richard E. Hayber, Esq.
Thomas J. Durkin, Esq.
The Hayber Law Firm, LLC
221 Main Street, Suite 502
Hartford, CT 06106
rhayber@hayberlawfirm.com
tdurkin@hayberlawfirm.com

Stephen W. Aronson
Nicole S. Mulé
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103
saronson@rc.com
nmule@rc.com


Tiffany N. Tisler