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

APPLICATION OF MORRY BROOKLER AND *BROOKLER* CLASS FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND *AMICUS CURIAE* BRIEF IN SUPPORT OF PLAINTIFFS, REAL PARTIES IN INTEREST AND PETITIONERS, AND FOR REVERSAL

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Application

Pursuant to rule 8.200(c) of the California Rules of Court, Morry Brookler and members of the putative class he seeks to represent (collectively, "Brookler"),[1] request permission to file the attached *amicus curiae* brief in support of Plaintiffs, Real Parties in Interest and Petitioners, Adam Hohnbaum, et al. in *Brinker Restaurant Corp. v. Superior Court (Hohnbaum)*, Case No. S166350 *(Brinker).*

Issues Presented

The two issues on appeal which Brookler will address revolve around the *Brinker* Plaintiffs' "Meal Period Compliance" issue, specifically:

1. Whether an employer must actually relieve workers of all duty so they can take their statutorily mandated meal breaks (not merely make meal breaks available) or, if for any reason the employee does not take the meal break, pay the employee the premium wages imposed by statute.

2. Whether the *Brinker* opinion erred in concluding that employees could waive or forego meal periods without meeting the Wage Order's specific requirements for waiving meal periods.

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[1] *Brookler v. RadioShack Corp.*, Los Angeles Superior Court, Case No. BC313383, is currently pending before the Honorable Edward A. Ferns, L.A.S.C. Department 69. The previously certified class was decertified on October 10, 2008, following the Court of Appeal decision in *Brinker* (see details below).

Interest of Amicus Curiae

On April 7, 2004, Morry Brookler filed a wage and hour class action against his former employer, RadioShack, to recover, *inter alia*, lost wages due to missed meal periods. On February 8, 2007, the Los Angeles Superior Court granted class certification in *Brookler* relying on the holding in *Cicairos v. Summit Logistics, Inc.*, 133 Cal. App. 4th 949, 962-963 (2005). When Brookler successfully defeated its first motion for decertification, RadioShack petitioned for writ of mandate which the Court of Appeal summarily denied on October 30, 2007. In November 2007, RadioShack petitioned this Court for review. *See RadioShack Corp. v. Superior Court (Brookler)*, Supreme Court Case No. S158083. This Court requested an informal response and received extensive briefing from both sides on some of the same issues discussed in *Brinker*. After reviewing the briefs, this Court (*en banc*) denied RadioShack's petition on January 3, 2008. Shortly after the *Brinker* opinion was issued on July 22, 2008, RadioShack filed a second decertification motion and, on October 10, 2008, the *Brookler* court decertified the class based on the holding in *Brinker*.

Because the meal period issues in *Brookler* mirror those in *Brinker*, Brookler and the putative class he represents respectfully request leave to file a brief as *Amicus Curiae* in the above entitled action.

Dated: March 19, 2009

Respectfully submitted,

LAW OFFICE OF IAN HERZOG

Ian Herzog
Attorney for *Amicus Curiae* Morry Brooker

AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFFS, REAL PARTIES AND PETITIONERS

I.

INTRODUCTION

On April 7, 2004, Morry Brookler, individually and on behalf of all similarly situated persons, filed a wage and hour class action against his former employer, RadioShack Corp., to recover, *inter alia*, lost wages due to missed meal periods. The Law Offices of Ian Herzog, the law firm of Daniels, Fine, Israel, Schonbuch & Lebovits, LLP, and the Law Offices of Stephen Glick jointly represent Mr. Brookler and the certified class of current and former, hourly RadioShack employees in California. Brookler alleges that RadioShack violated section 11 of Industrial Welfare Commission ("IWC") Wage Order No. 7-2000, and its successor order, 7-2001, by employing people for a period of more than five hours without an uninterrupted meal period of not less than 30 minutes.[2] Further, RadioShack violated these IWC Wage Orders and Labor Code section 226.7 by failing to pay each employee an additional hour of compensation at the employee's regular rate of pay for each day the employee worked through the required meal period.

On February 8, 2007, the Los Angeles Superior Court granted class certification in *Brookler* relying on the holding in *Cicairos v. Summit Logistics, Inc.*, 133 Cal. App. 4th 949, 962-963 (2005), that an employer's "obligation to provide [non-exempt employees]

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[2] The certified class consists of "All non-exempt employees at RadioShack stores in California from April 7, 2000, through the present who were not provided uninterrupted 30 minute meal periods following every 5 continuous hours of work."

with an adequate meal period is not satisfied by assuming that the meal period was taken, because 'employers have an affirmative obligation to ensure that workers are actually relieved of all duty.'" The trial court's order was also based upon RadioShack's own computerized timekeeping and sales records which included evidence that: (1) employees worked during times when meal periods were recorded; and (2) no meal periods were recorded after five hours of work.

RadioShack filed its first motion to decertify the class, arguing that in *Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal. 4th 1094 (2007), this Court established a new standard that employees must show they were "forced" not to take meal periods and that employers need only make them "available," thereby giving rise to individual issues. The trial court denied the motion on September 6, 2007. Following the Court of Appeal's October 30, 2007 summary denial of RadioShack's petition for a writ of mandate, RadioShack petitioned this Court for review in November 2007. *See RadioShack Corp. v. Superior Court (Brookler)*, Supreme Court Case No. S158083. This Court requested an informal response and received extensive briefing from both sides on some of the same issues discussed in *Brinker*. After reviewing the briefs, this Court (*en banc*) denied RadioShack's petition on January 3, 2008.

The *Brinker* opinion was issued on July 22, 2008. Two and a half weeks later, on August 8, 2008, RadioShack filed a second decertification motion arguing under *Brinker* that California law merely obligates employers to make meal periods "available" to employees, and that employees can choose to take them or not, without any obligation on the part of the employer to ensure the employees are relieved of work or the payment of

the premium wage when the employees work through the meal period. RadioShack argued that the trial court must decertify the class because the issue of whether employees take meal periods would require individual inquiries, e.g., whether the employee "chose" to forego a meal period, which would predominate over common questions. Plaintiffs' motion to stay the hearing pending this Court's decision in *Brinker* was denied, and the trial court granted RadioShack's decertification motion on October 10, 2008.

II.

ISSUES PRESENTED

1. Whether an employer must actually relieve workers of all duty so they can take their statutorily mandated meal breaks (not merely make meal breaks available) or, if for any reason the employee does not take the meal break, pay the employee the premium wages imposed by statute.

2. Whether the *Brinker* opinion erred in concluding that employees could waive or forego meal periods without meeting the Wage Order's specific requirements for waiving meal periods.

III.

ISSUE 1: EMPLOYERS MUST RELIEVE WORKERS OF ALL DUTY TO TAKE MEAL BREAKS OR PAY THE PREMIUM WAGES IMPOSED BY STATUTE

It has always been the law in California that nonexempt workers are paid for the time they work. *See, e.g.*, Cal. Lab. Code §§ 200, *et seq.*; 1171, *et seq.* An employer is

not entitled to free labor. Here, there is no dispute that employees worked through their meal periods. Under Labor Code section 226.7(b), the employer must pay for the services received in much the same manner as if the employee had worked overtime. However, rather than the premium wage of time and a half for overtime, the employee receives one hour's compensation for each half hour meal period missed.

Brookler is not trying to suggest that an employer is required to "force" an employee to take a meal period. For whatever reason the employee does not take a meal period, the Labor Code makes it clear the employee must be paid for the time worked.

After all, the employer is in charge of the workplace. The employer is in the best position to "ensure" that the employee takes a meal break. If the employee does not, the Labor Code's remedy is simple. The employer pays one hour for each one-half hour meal break missed. This is the Labor Code's method for "ensuring" that an employer is incentivized to "ensure" that the employee is both given and actually takes the meal period. The bottom line is that employers want free labor. They want this Court to adopt a scheme by which they can potentially "game" the system – have the employees work through their meal periods and preserve a technical reason not to compensate them for the time worked.

This is contrary to the Labor Code's mandate that if you work, you get paid. Under such a construct, nobody is "forced" to do anything. Rather, an employer is required to pay for services rendered – no more, but no less. Since the employer is in charge of the workplace, this is eminently fair. The suggestion that, under such a system, employees will somehow "game" the system is not corroborated by any credible evidence

that such a systemic problem exists. Rather, common sense tells us that a conscientious employer in charge of the workplace is in the best position to advance the humanitarian policy that workers should not be treated as machines, but should have their human needs met, *i.e.*, they should be able to take time out to eat a meal without interruption.

Quite apart from this humanitarian reason are public safety issues illustrated by a recent Metrolink crash. The Los Angeles Times' article on Saturday, September 20, 2008, makes the point.[3] In *Murphy*, this Court explained that mandatory meal periods

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[3] **Metrolink Contractor Lobbied For Delays In Meal Breaks**

The firm's workers include engineers for the rail line and public transit bus drivers. The rule change was unsuccessful and the company disputes whether it would've applied to engineers.

By Patrick McGreevy, Los Angeles Times Staff Writer
September 20, 2008

SACRAMENTO -- The company that provides engineers for Metrolink trains spent $105,000 during the last two years lobbying state lawmakers to give it flexibility to delay meal breaks for employees, including those who drive public transit buses.

Investigators looking into the Sept. 12 crash between Metrolink commuter train and a Union Pacific freight train have been examining human fatigue, including work schedules, as a possible contributing factor to the wreck, which occurred after the Metrolink sped through a red signal.

Five months ago, state lawmakers rejected legislation pushed by Veolia Transportation that would have allowed meal breaks for transportation workers to be delayed until nearly the seventh hour of a work shift. The current rules require at least a half-hour meal break at the start of the fifth hour of a shift that lasts more than five hours.

The company disputes whether the proposed rule change would have applied to Metrolink, but said it would have applied to its employees who drive mass transit buses. Investigators are trying to determine whether the Metrolink engineer, an employee of Veolia, missed signal lights because he was fatigued by working back-to-back split shifts that began before dawn and ended at 9 p.m.

Engineer Robert M. Sanchez was on a schedule of working 53 hours over five days at the time of the accident, in which 25 people, including Sanchez died. His workday was split between a 3-1/2 hour shift in the morning and a 7-hour shift in the evening, with a 4-1/2 hour break in between.

serve important health and safety concerns. "Employees denied their rest and meal periods face greater risk of work-related accidents and increased stress, especially low-wage workers who often perform manual labor. [Citations]. Indeed, health and safety considerations (rather than purely economic injuries) are what motivated the IWC to adopt mandatory meal and rest periods in the first place." *Murphy*, 40 Cal. 4th at 1113 (citations omitted). Finally, in *Murphy*, this Court reiterated that "statutes regulating conditions of employment are to be liberally construed with an eye to protecting employees." *Id.* at 1111 (citations omitted). The issue is not, as *Brinker* frames it, forcing employees not to take meal periods against their will. It is instead requiring

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There has been a running battle in Sacramento for the last two years over the issue of breaks for transportation workers and others.

Veolia, part of a French multinational company, hired lobbyists to influence two bills in Sacramento that could have changed the rules on meal breaks. The firm and its executives have also made more than $80,000 in contributions during the last decade to California politicians.

Current state law requires that employees who work more than six consecutive hours be provided a meal break of at least half an hour at the beginning of their fifth hour. The bills, which died in committee, would have allowed meal breaks to be provided as late as the completion of the sixth hour of work.

Veolia lobbyist William E. Barnaby argued that the current meal requirements add to the expense of services.

"The inflexibility of existing law has significantly increased business expenses. . . and has made it impossible to accommodate employee requests for meal period adjustments so they can take care of personal and family needs," Barnaby wrote to lawmakers.

Union groups including the California Labor Federation argued that the law would "permit employers to wait until the seventh hour of work to take a meal, period."

The federation's Caitlin Vega warned legislators that such delays could put people at risk. "Taking regular breaks is essential for worker health and safety and is key to preventing workplace injuries," she wrote to legislators.

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employers to comply with legal requirements designed to promote the health and welfare of employees, to support the business of employers, and to benefit the public.

The danger posed by the analysis and conclusions in *Brinker* is manifest. The requirements regarding meal periods and rest breaks apply to non-exempt employees, that is, that large subset of employees who are primarily engaged in production work. These include truck drivers, health care workers, persons operating any manner of machinery, and numerous other types of occupations where the regulations regarding the "health and safety" of the employee are not mere lip service but are truly vital to an injury-free workplace. If such protections are to be removed, then it must be done after careful analysis and consideration through the Legislature and rulemaking bodies and not by judicial fiat based upon self-serving legal arguments of employers acting out of economic self-interest.

Under *Cicairos*, California law imposes on employers the affirmative duty to ensure that their employees break for meals. What *Cicairos* does not articulate – but strongly implies – is the economic consequences to an employer if it fails to do so. If the employee does not take or get the meal period, but rather works through it, the employer pays for the services received. This is no more than the employer's legal obligation (as intended by the IWC Wage Orders and Labor Code section 226.7) to keep accurate records of their employees' meal periods, and either: (1) have their employees take meal periods; or (2) pay them an additional hour's wage for each day a required meal period is missed.

Employers are attempting to escape the enforcement mechanism (premium wages) for their refusal to comply with the meal period requirements enacted for the employees' protection. The workplace must not be allowed to return to the "good old days" before the 2000 enactment of Labor Code section 226.7, when missed meal periods for nonexempt employees did not result in the imposition of a premium payment. All of the *Brinker* arguments were made at that time, but were rejected by the California Legislature and the IWC which decided to put teeth into the meal period requirement by imposing the premium wage.

Employers should pay if employees miss meal periods. *Brinker*, *White v. Starbucks Corp.*, 497 F. Supp. 2d 1080 (N.D. Cal. 2007), and all of the cases which parrot them, fail to address the simple requirement under California law that, if an employee works through a meal period, that employee is entitled to be paid. No one can argue, as a matter of law, that if an employee works overtime the employer can avoid payment by claiming that the overtime was voluntary. The issue has nothing to do with "forcing," "ensuring," "providing," or "making available." It has everything to do with requiring employers to pay employees for the work they perform.

The employers' obligation with respect to the meal period requirement is similar to their obligation with respect to overtime work. *See, e.g., Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1109-1114 (2007). Laws regulating both the meal periods and overtime laws serve the fundamental salutary public policy of protecting the health and safety of employees. *See Gentry v. Superior Court*, 42 Cal. 4th 443, 456 (2007). An employee may work overtime, but the employer must pay a premium wage for that work.

Where an employee works through a meal period, it is no different than overtime work; in each instance the employer must pay a premium wage for the work which exceeds the standard working conditions which have been determined by the Legislature and the Industrial Welfare Commission. *Murphy*, 40 Cal. 4th at 1110 ("The IWC intended that, like overtime pay provisions, payment for missed meal and rest periods be enacted as a premium wage to compensate employees, while also acting as an incentive for employers to comply with labor standards").

In both contexts, the employer must compensate for labor which is for the benefit of and controlled by the employer. If employers do not want to pay the premium wages for employees who work through meal periods or work overtime hours, then the employer is free to establish compliance procedures, monitor employees, keep accurate records, and discipline employees who work excessive overtime or do not take required meal periods. In fact, employers routinely monitor and enforce compliance with overtime laws in order to maintain labor costs and to preclude "off-the-clock" claims, and no reason exists to treat meal periods any differently.

The suggestion that employers are unable to control whether their employees work through meal periods is nonsensical. The notion is as inconceivable as one which clams that employers are unable to control whether their employees work overtime. Similarly, employers cannot plausibly argue that they are unable to: (1) control discrimination in the workplace; (2) prevent sexual harassment; (3) assure that prices and scales are correct; or (4) assure that employees wear hair nets or safety goggles or comply with myriad, highly

detailed rules, regulations, and laws controlling the workplace. Employers must follow these employment laws or face civil, administrative and even criminal liability.

With an eye to the proverbial "bottom line," employers can and will make certain their employees do not work through meal breaks if the employers do not want to pay for it, just as they do with overtime. "'In all such cases it is the duty of the management to exercise its control and see that work is not performed if it does not want it to be performed.'" *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 584-585 (2000) (quoting 29 C.F.R. § 785.13) (underscoring added). The principles enunciated in *Morillion* control an employer's obligation to relieve employees of all duty during a required meal periods. The principles apply when calculating overtime and the total number of hours worked in a day or week. 22 Cal. 4th at 584-585. They also apply when calculating the number of meal periods that do not comply with Labor Code section 512 and the Wage Orders. *Cicairos*, 133 Cal. App. 4th at 962-963.

We have indeed reached a remarkable point in our history if an employer can make an employee give a blood sample for drug screening, wear a specific pair of pants, dress and shirt to work, provide criminal and financial histories, monitor the employee's e-mails and internet use, prescribe the employee's behavior, dictate when the employee is to arrive and depart, etc., and yet that same employer can be deemed helpless to determine whether or not that employee (a) worked through or (b) took a lunch. If the employer is allowed to argue that it should not have to pay the employee because the employee wanted to work for free instead of taking a lunch, we have passed through the looking glass.

Employers cannot be allowed to regress to the halcyon days before the meal period requirements had teeth, *i.e.*, before the enforcement mechanism of imposing a premium payment for missed meal periods was enacted. In order to uphold the employee-protective provisions of Labor Code sections 512 and 226.7 and the applicable IWC Wage Orders, Brookler urges the Court to clarify that employers either allow their employees take required meal periods or pay those employees one hour of premium pay for each day they miss a meal.

IV.

ISSUE 2: EMPLOYEES CANNOT WAIVE MEAL PERIODS WITHOUT MEETING WAGE ORDER'S SPECIFIC WAIVER REQUIREMENTS

Brinker's holding that employees may forego meal periods at will cannot be harmonized with the wage orders' specific requirements for waiving meal periods. The Wage Orders carefully prescribe how and under what circumstances an employer and employee may agree to a waiver of a meal period by the employee without requirement for payment of the premium wage. Yet, under *Brinker* the requirements for waiver are completely ignored so that meal periods are provided or not, according to whim, and the employer is entirely freed from paying the premium wage. Worse yet, the employee is saddled with proving that the employer "forced" the employee not to take the meal period. As discussed further below, these holdings not only invite mischief on the part of the employers who stand to gain an economic advantage akin to free overtime work, but they also remove protections for the health and safety of employees which

were the very purposes for the Labor Code provisions and the Wage Orders in the first place.

By rolling back both the clock and fundamental workplace protections, employers ask the courts to usurp the roles of the Legislature and IWC in establishing the minimum conditions of labor in this State, and this Court should decline these requests in favor of affording non-exempt employees the protections enacted for their benefit.

Meal periods, like overtime pay and minimum wage, are mandatory. *Murphy*, 40 Cal. 4th at 1106, 1111, 1113. Thus, like overtime and minimum wage, the right to meal period premiums is generally unwaivable. *See Gentry*, 42 Cal. 4th at 456. "As with the minimum wage obligation, the employer is not entitled to excuse the fact that he or she employed an employee for a period of more than five hours without a meal period on the failure of the employee to take the meal period." DLSE Enforcement Policies & Interpretations Manual § 45.2.1, at 45-4 (underscoring added).

The Wage Orders expressly provide that meal periods may be waived by the employee only under certain circumstances, and even then the waiver must be in accordance with strictly prescribed standards and methods. The Wage Order requires an off-duty meal period during which time the employee must be "relieved of all duty." There are only two circumstances, set out in the Wage Orders, when this required off-duty meal period is not strictly mandated. All of the IWC's 17 industry or occupational Wage Orders, excepting Wage Order 14 (agricultural occupations), contain this same core requirement for meal periods.

If, as employers argue, an employee can voluntarily choose to work during a required meal period (without requiring the employer to pay the premium under Labor Code section 226.7(b)), the IWC would have had absolutely no reason to set out in the Wage Orders any circumstances under which there could be (1) a meal period waiver and (2) an on-the-job meal period. "Well-established canons of statutory construction preclude a construction [that] renders a part of a statute meaningless or inoperative." *Manufacturers Life Ins. Co. v. Superior Court*, 10 Cal. 4th 257, 274 (1995).

If employers need do nothing more than make meal periods "available" to employees, then no purpose is served by the Wage Orders' strict requirements governing when, under what circumstances, and how a meal period can be waived or an on-the-job meal period provided. Statutes are to be construed so as to harmonize their requirements and avoid anomaly. *Coachella Valley Mosquito & Vector Control Dist. v. California Public Employment Relations Bd.*, 35 Cal. 4th 1072, 1089 (2005).

While employers contend that employees should be able to waive meal periods in a manner not proscribed by the Wage Orders or Labor Code section 512, it is well established that "where exceptions to a general rule are specified by statute, other exceptions are not to be presumed unless a contrary legislative intent can be discerned." *Mountain Lion Foundation v. Fish & Game Comm'n*, 16 Cal. 4th 105, 116 (1997). "[I]f exemptions are specified in a statute, we may not imply additional exemptions unless there is a clear legislative intent to the contrary." *Sierra Club v. State Bd. of Forestry*, 7 Cal. 4th 1215, 1230 (1994).

The applicable Wage Orders mandate that employers relieve employees of all duty during meal periods. If the employer allows employees to perform work during the meal period (except when there has been a valid waiver under one of the two exceptions provided by the Wage Order), the employer has to pay the premium for that work.

The *Brinker* court cannot be allowed to judicially create and adopt an interpretation of the law which states, in effect, "An employee may waive any meal period without the employer's consent." Such an interpretation would contravene and render meaningless the portions of Labor Code section 512 and the applicable Wage Orders that expressly dictate when an employee may and may not waive a meal period. This Court has had ample opportunity to create a standard of permitting employees to waive their meal periods without the employer's consent, in direct contravention to the Labor Code and Wage Orders, but has so far declined to do so.

The unassailable fact is that there is no "free working lunch." If the employer receives the fruits of the employee's labors, it must pay for them.

V.

CONCLUSION

Courts are struggling with inconsistent holdings on the issue of whether employers are legally obligated to ensure that their employees take meal periods (or pay a premium for missed meals) or whether they can merely make meal periods available to (and easily waivable by) their employees. Resolution of the issue will have a profound effect on employees and employers throughout California.

For the reasons set forth above, Morry Brookler and the putative *Brookler* class respectfully request that this Court reverse the judgment of the Court of Appeals and reinstate the class certification order. Alternatively, at a minimum, Brookler requests that this Court remand the case to the trial court for a new class certification determination consistent with the Court's opinion.

DATED: March 19, 2009

Respectfully submitted,

THE LAW OFFICE OF IAN HERZOG

Ian Herzog
Attorney for Amicus Curiae Morry Brookler and the Putative *Brookler* Class

CERTIFICATE OF COMPLIANCE

WITH WORD COUNT REQUIREMENT

Pursuant to Rule of Court 8.504(d)(1), the undersigned hereby certifies that the computer program used to generate this brief indicates that this Amicus Curiae brief contains 4657 words (including footnotes, but excluding tables and this certificate).

Executed on March 19, 2009, at Santa Monica, California.

Ian Herzog

PROOF OF SERVICE
Brinker v. Hohnbaum
(Supreme Court #S166350)

STATE OF CALIFORNIA)
) *ss.*
COUNTY OF LOS ANGELES)

I am over the age of 18, employed in the County of **Los Angeles**, and not a party to this action. My business address is **233 Wilshire Boulevard, Suite No. 550, Santa Monica, California 90401**. I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the U.S. Postal Service. On **MARCH 19, 2009**, I served a copy of the following documents:

APPLICATION OF MORRY BROOKLER AND *BROOKLER* CLASS FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND *AMICUS CURIAE* BRIEF IN SUPPORT OF PLAINTIFFS, REAL PARTIES-IN-INTEREST AND PETITIONERS, AND FOR REVERSAL

on the party or parties named below in Case No. **S166350**, by placing a true copy thereof enclosed in a sealed envelope, for collection and mailing with the U.S. Postal Service where it would be deposited for first class delivery, with postage fully prepaid in the U.S. Postal Service that same day in the ordinary course of business addressed as follows:

SEE ATTACHED SERVICE LIST

If an * is placed before any name, it means personal delivery, and a declaration of personal service will be filed with the Court.

If ** is placed before any name, it means the document was transmitted by FAX to the FAX number on the attached service list and a declaration of service by FAX will be filed with the Court.

If this is a Federal Court case: I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service is made.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on **MARCH 19, 2009** at Santa Monica, California.

Linda Barber
LINDA BARBER

SERVICE LIST
Brinker v. Hohnbaum
(Supreme Court #S166350)

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California Court of Appeal

Brinker Retaurant Corp. v. Superior Court (Hohnbaum)
Service List