
United States Court of Appeals
for the
Eleventh Circuit

BRINKER INTERNATIONAL, INC.,

Petitioner,

versus

ERIC STEINMETZ, MICHAEL FRANKLIN, SHENIKA THEUS,

Respondents.

On Appeal From The United States District Court
for the Middle District Of Florida, Case No. 3:18-cv-00686-TJC-MCR.
The Honorable **Timothy J. Corrigan**, Chief U.S. District Judge and
The Honorable **Monte C. Richardson**, U.S. Magistrate Judge.

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* RESTAURANT
LAW CENTER, RETAIL LITIGATION CENTER, INC., and NATIONAL RETAIL
FEDERATION IN SUPPORT OF PETITION FOR PERMISSION TO APPEAL
PURSUANT TO FED. R. CIV. P. 23(f)**

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**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1 through 26.1-3, *amici curiae* hereby certify that they are non-profit member organizations with no publicly-traded stock.

Pursuant to Eleventh Circuit Rule 26.1-2(b), *amici curiae* hereby certify that, to the best of their knowledge, the following individuals and entities have an interest in the outcome of this case:

1. Ahdoot & Wolfson, PC – Counsel for Plaintiffs-Respondents
2. Alamillo, Peter – Former Plaintiff
3. Amador, Angelo I. – Counsel for *amicus curiae* Restaurant Law Center
4. Anderson, Jaclyn L. – Counsel for Plaintiffs-Respondents
5. Barthle, Patrick A. – Counsel for Plaintiffs-Respondents
6. Brinker International, Inc.; NYSE:EAT – Defendant-Petitioner
7. Clark, Miles – Counsel for Plaintiffs-Respondents
8. Cornelia, Sarah B. – Counsel for Defendant-Petitioner
9. Corrigan, Hon. Timothy J. – U.S. District Court Chief Judge of originating court
10. Cox, Barton W. – Counsel for Defendant-Petitioner

11. Cozen O'Connor – Counsel for *amici curiae* Restaurant Law Center, Retail Litigation Center, Inc., and National Retail Federation
12. Fagelman, Jason K. – Counsel for Defendant-Petitioner
13. Federman, William B. – Counsel for Plaintiffs-Respondents
14. Federman & Sherwood – Counsel for Plaintiffs-Respondents
15. Franklin, Jonathan – Counsel for Defendant-Petitioner
16. Franklin, Michael – Plaintiff-Respondent
17. Fuller, Daniel – Counsel for Defendant-Petitioner
18. Girolamo, Rebecca A. – Counsel for *amici curiae* Restaurant Law Center, Retail Litigation Center, Inc., and National Retail Federation
19. Green, Christopher – Counsel for Defendant-Petitioner
20. Green-Cooper, Marlene – Former Plaintiff
21. Hannon, Kevin S. – Counsel for Plaintiffs-Respondents
22. The Hannon Law Firm, LLC – Counsel for Plaintiffs-Respondents
23. Hendrix, Nicholas – Counsel for Defendant-Petitioner
24. Kaplan, Max E. – Counsel for *amici curiae* Restaurant Law Center, Retail Litigation Center, Inc., and National Retail Federation
25. Kester, Francesca – Counsel for Plaintiffs-Respondents
26. Knepper & Clark, LLC – Counsel for Plaintiffs-Respondents
27. Lang, Christopher – Former Plaintiff

28. Lawrence, Brian Christopher – Counsel for Defendant-Petitioner
29. LippSmith, Graham B. – Counsel for Plaintiffs-Respondents
30. LippSmith LLP – Counsel for Plaintiffs-Respondents
31. Lowndes, Drosdick, Doster, Kantor & Reed, PA – Counsel for Defendant-Petitioner
32. Martin, Jean Sutton – Counsel for Plaintiffs-Respondents
33. Martz, Stephanie – Counsel for *amicus curiae* National Retail Federation
34. McTigue Jr., Michael W. – Counsel for *amici curiae* Restaurant Law Center, Retail Litigation Center, Inc., and National Retail Federation
35. Morgan & Morgan, PA – Counsel for Plaintiffs-Respondents
36. National Retail Federation –*amicus curiae*
37. Norton Rose Fulbright US LLP – Counsel for Defendant-Petitioner
38. Restaurant Law Center –*amicus curiae*
39. Retail Litigation Center, Inc. –*amicus curiae*
40. Richardson, Hon. Monte C. – U.S. Magistrate Judge in originating court
41. Sanders, Fred – Former Plaintiff
42. Sauder, Joseph G. – Counsel for Plaintiffs-Respondents
43. Sauder Schelkopf, LLC – Counsel for Plaintiffs-Respondents

44. Siegal, Peter B. – Counsel for Defendant-Petitioner
45. Slawe, Meredith C. – Counsel for *amici curiae* Restaurant Law Center, Retail Litigation Center, Inc., and National Retail Federation
46. Sorrell, W. Drew II – Counsel for Defendant-Petitioner
47. Steinmetz, Eric – Plaintiff-Respondent
48. Summers, Daniel – Former Plaintiff
49. Theus, Shenika – Plaintiff-Respondent
50. White, Deborah R. – Counsel for *amicus curiae* Retail Litigation Center, Inc.
51. Wolfson, Tina – Counsel for Plaintiffs-Respondents
52. Yanchunis, John Allen – Counsel for Plaintiffs-Respondents

Dated: May 5, 2021

/s/ Meredith C. Slawe
Meredith C. Slawe

Counsel for Amici Curiae

MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

The Restaurant Law Center (“Law Center”), Retail Litigation Center, Inc. (“RLC”), and National Retail Federation (“NRF”) (collectively, “*Amici*”) respectfully move for leave to file the attached brief of *amici curiae* in support of Petitioner Brinker International, Inc.’s Petition for Permission to Appeal Pursuant to Federal Rule of Civil Procedure 23(f) from the Order Granting Class Certification (“Petition”).

1. The Law Center is a public policy organization affiliated with the National Restaurant Association, the largest foodservice trade association in the world. The foodservice industry comprises over one million restaurants and other outlets that represent a broad and diverse group of owners and operators—from large national restaurant chains to small single-location, family-run neighborhood restaurants and bars, and everything in between. The industry employs over 15 million people and is the nation’s second-largest private-sector employer.

2. The RLC is the only trade organization solely dedicated to representing the retail industry in the courts. The RLC’s members include many of the country’s largest and most innovative retailers. Collectively, they employ millions of workers in Florida and throughout the U.S., provide goods and services to hundreds of millions of consumers, and account for hundreds of billions of dollars in annual sales.

3. The NRF is the world's largest retail trade association and the voice of retail worldwide. The NRF's membership includes retailers of all sizes, formats and channels of distribution, as well as restaurants and industry partners from the U.S. and more than 45 countries abroad. In the U.S., the NRF represents the breadth and diversity of an industry with more than 52 million employees and contributes \$3.9 trillion annually to GDP.

4. Through regular *amicus* participation, *Amici* provide courts with perspectives on legal issues that have the potential to significantly impact their respective industries. This is one such case.

5. Courts routinely permit *amicus curiae* to file briefs in support of petitions for permission to appeal class certification orders pursuant to Federal Rule of Civil Procedure 23(f). *See, e.g., DirectTV, LLC v. Cordoba*, No. 17-90020 (11th Cir. May 21, 2018) (granting motion to file *amicus* brief in support of Rule 23(f) petition where consent of both parties was not provided); *Brown v. Electrolux Home Prods., Inc. d/b/a/ Frigidaire*, No. 15-11455 (11th Cir.) (multiple *amicus* briefs filed in support of Rule 23(f) petition); *Reyes v. NetDeposit, LLC*, No. 13-8086 (3d Cir. Nov. 1, 2013) (granting opposed motions to file *amicus* briefs in support of Rule 23(f) petition); *In re ComScore, Inc.*, No. 13-8007 (7th Cir. May 28, 2013) (same). Courts often grant motions for leave to file such *amicus curiae*

briefs to provide broader understanding of the significance of the legal issues presented.

6. In this case, the district court certified two massive classes in connection with claims related to a data breach. The certified classes include millions of individuals who sustained no actual injury and who do not face a substantial risk of an imminent injury traceable to Petitioner's alleged actions. The court concluded that averaging damages across the classes and awarding the average to each class member regardless of any actual injury somehow makes common issues predominate. Order ("Order") at 32–34, *In re Brinker Data Incident Litig.*, No. 18-0686 (M.D. Fla. Apr. 14, 2021), Dkt. No. 167. The district court's ruling, which eliminated the protections and safeguards afforded defendants under Rule 23 and violated Petitioner's due process rights, will also encourage the filing of abusive no-injury class actions against *Amici's* members that conduct business in this Circuit.

7. *Amici's* brief expands on the party briefing by providing important background on the no-injury class actions that are routinely filed against *Amici's* members in this Circuit and elsewhere. Such actions will likely increase if the district court's decision is left undisturbed.

8. No counsel for a party authored the attached brief in whole or in part, and none of the parties or their counsel nor any other person or entity other than

Amici or their counsel made a monetary contribution intended to fund the preparation or submission of the brief. *See* Fed. R. App. P. 29(a)(4)(E).

9. *Amici's* brief is timely as it has or will be filed within seven days of the filing of the Petition. *See* Fed. R. App. P. 29(a)(6).

10. This Motion complies with Federal Rule of Appellate Procedure 29(a)(5) because it is no more than half the maximum length of 5,200 words authorized for a motion. *See* Fed. R. App. P. 5(c)(1).

11. Petitioner consents to the filing of *Amici's* brief; Respondents have refused to consent.

WHEREFORE, given their substantial interest in this case, the Restaurant Law Center, Retail Litigation Center, Inc., and National Retail Federation respectfully move for leave to file the attached brief as *amici curiae*.

Respectfully submitted,

/s/ Meredith C. Slawe

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing motion complies with Fed. R. App. P. 27 and 11th Cir. R. 27-1 and the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 789 words.

The undersigned further certifies that this motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in a proportionally spaced typeface using Microsoft Word Version 2016 in 14-point Times New Roman font.

Dated: May 5, 2021

/s/Meredith C. Slawe

Meredith C. Slawe

Counsel for *Amici Curiae*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 5, 2021, a true and correct copy of the foregoing was served on all counsel of record via the court's CM/ECF System.

/s/ Meredith C. Slawe _____
Meredith C. Slawe