***Hernandez v. Chipotle Mexican Grill, Inc.* – The standard for rest breaks applies to meal periods, though the *Brinker* case remains pending before the California Supreme Court**

In 2010, a California Court of Appeal held that employers need only authorize and permit employees to take meal breaks, but need not ensure that they take them. The court decided that it would establish such a standard despite the pending California Supreme Court decision in *Brinker Restaurant Corporation, et al. v. Superior Court (Hohnbaum),* 165 Cal.App.4th 25 80 Cal.Rptr.3d (2008).

In *Hernandez*, the court determined whether employers must ensure that employees take meal breaks. Chipotle's written policies required managers to give employees meal and rest breaks. Accordingly, managers were to determine when, or if, employees were permitted to take breaks. The plaintiff, Rogelio Hernandez, was employed at a Chipotle restaurant as an hourly-paid worker. He brought suit against his employer for not providing meal and rest breaks to hourly employees.

Chipotle moved to deny class certification and the trial court denied certification on the grounds that individual issues predominated over common issues, and class treatment was not superior to individual actions. The trial court held that with regard to rest breaks, employers need only authorize and permit such breaks, which means to make them available. The trial court recognized that the California Supreme Court had granted review of two cases to decide whether California law required employers to ensure employees take meal breaks, or if the proper standard was that employers need only provide employees with the opportunity to take such breaks.

The Court of Appeal affirmed the lower court's decision. The Court held that employers must make meal and rest periods available, not ensure that they are taken. The Court also held that California law did not prevent the trial court from addressing the issue of making breaks

available as opposed to ensuring breaks are taken – in terms of class certification. The Court also held that the employer's time records did not show that Hernandez could prove “class-wide” failure to provide meal and rest periods. Finally, the Court held that there was substantial evidence of conflicts of interest among the putative class members because some class members also acted as managers/supervisors, and some class members might accuse others of violating California wage laws.

The *Hernandez* decision could potentially be granted review and held by the California Supreme Court in the near future. Such has been the case in several other appellate decisions pending the aforementioned *Brinker* matter. This includes *Brinkley v. Public Storage*, 87 Cal.Rptr.3d 674 (2009), *Bradley v. Networkers International, LLC* (unpublished decision) (2009) and most recently, *Faulkinbury v. Boyd & Associates*, 185 Cal.App.4th 1363 112 Cal.Rptr.3d (2010). The pending *Brinker* case “presents issues concerning the proper interpretation of California's statutes and regulations governing an employer's duty to provide meal and rest breaks to hourly workers.”