

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

Joy Eberline, *et al.*,

Plaintiffs,

v.

Douglas J. Holdings, Inc., *et al.*,

Defendants.

Case No. 14-cv-10887

Judith E. Levy

United States District Judge

Michael J. Hluchaniuk

United States Magistrate Judge

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**MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE***

The American Association of Cosmetology Schools (“AACS”), as *amicus curiae*, respectfully moves the Court for leave to file the attached proposed *amicus curiae* brief in support of Defendants’ Motions to Certify Order [Dkt. 77] for Interlocutory Appeal under 28 U.S.C. § 1292(b) and for Stay. Counsel for the AACS have reviewed the pending Motion papers and this Court’s Order at Dkt. 77, and the AACS believes it can assist the Court in resolving, among other things, a key issue raised by the Motion: whether a substantial ground for difference of opinion on the issue of cosmetology school students’ status as students versus Fair Labor Standards Act (“FLSA”) “employees”

exists based upon the expertise and prerogative of cosmetology school regulators, accreditors, and cosmetology school decision makers to determine the appropriate curriculum for cosmetology students; namely, that students best learn the cosmetology profession by doing all of the tasks cosmetologists regularly perform in a salon, including cleaning, doing laundry, and restocking products. The AACS's proposed *amicus* brief augments the positions of the parties pending before the Court.

Counsel for the AACS respectfully requests that the Court also grant the relief sought by this Motion by text-only order, in accordance with R11(c) of the Electronic Filing Policies and Procedures of the United States District Court for the Eastern District of Michigan.

**BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE BRIEF  
AMICUS CURIAE**

**I. Concise Statement of the Issues Presented**

Whether the Court should grant *amicus curiae* American Association of Cosmetology Schools’s (“AACCS”) motion for leave to file the proposed *amicus curiae* brief in support of Defendants’ Motions to Certify Order [Dkt. 77] for Interlocutory Appeal under 28 U.S.C. § 1292(b) and for Stay, a copy of the *amicus curiae* brief is attached as Exhibit A.

**II. Controlling or Most Appropriate Authority for the Relief Sought**

*United States v. Michigan*, 940 F.2d 143, 165 (6th Cir. 1991)

**III. Argument**

*Amicus* American Association of Cosmetology Schools (“AACCS”) is a national, non-profit association. Its members offer courses of instruction in the beauty and wellness industry, including cosmetology, skin, nail, barbering and massage programs. AACCS has over 600 member schools. And AACCS estimates that cosmetology programs – both AACCS member schools and non-member institutions – educate nearly 200,000 students annually. Cosmetology school graduates tend to be self-employed. Many go on to become owners of small businesses.

Cosmetology and barbering programs are regulated by the states. The overwhelming majority of AACS members are small, single location schools owned by families.

Based on this experience, the AACS is concerned that without certification of Dkt. 77 for interlocutory appeal, there will be profound disruption to the education of tens of thousands of students at AACS member schools, and a serious threat to the economic viability of those schools.

The proposed *amicus* brief attached to this motion elaborates on this, supplementing the parties' briefs and, the AACS hopes, aids the Court in making its decision on Defendants' Motion.

Participation as an *amicus* is "a privilege within 'the sound discretion of the courts,' depending upon a finding that the proffered information of amicus is timely, useful, or otherwise necessary to the administration of justice." *United States v. Michigan*, 940 F.2d 143, 165 (6th Cir. 1991). "Generally, courts have exercised great liberality in permitting an *amicus curiae* to file a brief in a pending case . . . . There are no strict prerequisites that must be established prior to qualifying for amicus status; an individual seeking to appear as *amicus* must

merely make a showing that his participation is useful to or otherwise desirable to the court.” *Merritt v. McKenney*, 2013 WL 4552672, \*3 (N.D. Cal. Aug. 27, 2013) (quoting *In re Roxford Foods Litig.*, 790 F. Supp. 987, 997 (E.D. Cal. 1991) (quoting *United States v. Louisiana*, 751 F. Supp. 608, 620 (E.D. La. 1990))).

The AACS is appearing in this case because of the potential ramifications, beyond the parties in this case, of any possible decision that finds cosmetology school students to be anything other students. Because the AACS represents the broader interests of cosmetology programs across the nation, the proposed *amicus* brief provides arguments that go beyond those set forth in the parties’ briefs, and that constitute “proffered information of amicus” that the AACS hopes will be “useful” to the court’s deliberations, *United States v. Michigan*, 940 F.2d at 165. The brief will also be useful to the Court because it fills out the full range of arguments that will likely be before the Sixth Circuit in the event of an appeal.

Accordingly, the AACS respectfully requests leave to file the attached *amicus* brief. Consistent with E.D. Mich. L.R. 7.1(a), although Defendants’ counsel concurs in the filing of the proposed *amicus* brief,

on November 20, 2018, *amicus's* counsel contacted Plaintiffs' counsel and requested but did not obtain concurrence in filing this proposed brief.

Dated: November 30, 2018

Respectfully submitted,

Duane Morris LLP

By: /s/ Edward M. Cramp  
Edward M. Cramp

Edward M. Cramp (CA 212490)  
750 B Street, Suite 2900  
San Diego, CA 92101-4681  
619.744.2200 – phone  
emcramp@duanemorris.com

Mark J. Stanisz (PA 315408)  
(*admission forthcoming*)  
30 South 17th Street  
Philadelphia, PA 19103  
215.979.1824 – phone  
mjstanisz@duanemorris.com

Plunkett Cooney, P.C.

Mary Massaron (P43885)  
(*local counsel*)  
38505 Woodward Avenue, Suite 100  
Bloomfield Hills, MI 48304  
313.983.4801 – phone  
mmassaron@plunkettcooney.com

Attorneys for *Amicus Curiae* American  
Association of Cosmetology Schools

**CERTIFICATE OF SERVICE**

I, Edward M. Cramp, hereby certify that on November 30, 2018, I electronically filed the above document with the Clerk of Court using the ECF system, which will send electronic copies to counsel of record.

/s/ Edward M. Cramp  
Edward M. Cramp