

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

Market Synergy Group, Inc.,

Plaintiff,

v.

United States Department of Labor, Thomas E.  
Perez, in his official capacity as Secretary of the  
United States Department of Labor, and Phyllis C.  
Borzi, in her official capacity as Assistant Secretary  
of the United States Department of Labor  
and

United States Department of Labor,

Defendants.

Civil Action No. 5:16-cv-04083  
Hon. Daniel D. Crabtree

**MOTION OF PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION FOR  
LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF DEFENDANTS**

The Public Investors Arbitration Bar Association (PIABA) respectfully moves under for leave to file a brief as *amicus curiae* in support of Defendants' opposition to Plaintiffs' application for a preliminary or permanent injunction (attached as Exhibit A). Accepting a brief from *amicus curiae* lies within the "within the sound discretion of the court." *Hammond v. City of Junction City, Kansas*, No. 00-2146-JWL, 2001 WL 1665374, at \*1 (D. Kan. Dec. 17, 2001) (citations omitted). Courts usually accept *amicus curiae* briefs on finding that "the proffered information of amicus is useful or otherwise necessary to the administration of justice." *Id.* (citations omitted). This Court has previously indicated that *amicus curiae* filings must conform to Local Rule 7.6. *Marie v. Moser*, No. 14-CV-02518-DDC/TJJ, 2014 WL 5800151, at \*4 (D. Kan. Nov. 7, 2014) (instructing that briefs from *amicus curiae* "conform to D. Kan. Rule 7.6") (J., Crabtree).

PIABA's proposed *amicus curiae* brief provides useful information to the Court and provides the perspective of investors that will be affected by this Court's ruling. PIABA is an international bar association whose members represent investors in disputes with the securities industry. The mission of PIABA is to promote the interests of the public investor in securities and commodities arbitration by protecting public investors from abuses in the arbitration process; making securities and commodities arbitration as just and fair as systematically possible; and creating a level playing field for the public investor in securities and commodities arbitration. PIABA accomplishes this mission partly through active involvement in the administrative rule-making process. PIABA regularly issues comment letters regarding FINRA rule changes, provides testimony to government agencies and Congress, and files amicus briefs on a variety of issues pertaining to the protection of the investing public.

PIABA members represent investors who have received conflicted advice from investment advisers, securities brokers, and insurance brokers, oftentimes in connection with their retirement accounts. PIABA members have seen firsthand the harm that has resulted from the current regulatory system. PIABA gives a voice to those investors in the rule-making process and advocates for their protection. In its brief, PIABA is able to speak to the impact on investors of the current system, if the Department's Conflict of Interest Rule is not permitted to be fully enacted and the status quo is maintained. PIABA's brief presents this court with information about the background as to why the Department is best suited to enact this rule, given the differing entities working within the retirement advice space.

PIABA represents it has contacted counsel for both parties. Plaintiff has objected to PIABA filing an *amicus* brief. Defendants consent to the filing of this proposed *amicus* brief. The proposed *amicus* brief (including a certificate of corporate disclosure) is attached as an exhibit to this motion. A proposed order is attached as well.

Dated: July 27, 2016

Respectfully submitted,

BY: /s/ Diane A. Nygaard  
Diane A. Nygaard (Kansas Bar No. 10997)  
KENNER NYGAARD  
DEMAREA KENDAL LLC  
117 W. 20th Street, Suite 201  
Kansas City, MO 64108  
Phone: (816) 531-3100  
Fax: (816) 531-3600  
diane@kndklaw.com

*Counsel for Amicus Curiae  
Public Investors Arbitration Bar Association*

**CERTIFICATE OF SERVICE**

I hereby certify on that July 27, 2016, the Motion of the Public Investors Arbitration Bar Association for Leave to File *Amicus Curiae* Brief in Support of Defendants was electronically filed the Clerk of the Court for the United States District Court for the District of Kansas by using the CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: July 27, 2016

Respectfully submitted,

/s/ Diane A. Nygaard  
Diane A. Nygaard (Kansas Bar No. 10997)