

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

AARON LEIGH-PINK; and  
TANA EMERSON,

Appellants,

v.

RIO PROPERTIES, LLC,

Respondent.

Case No. 82572

Electronically Filed  
Jul 16 2021 12:20 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**MOTION OF PUBLIC CITIZEN, NATIONAL ASSOCIATION OF  
CONSUMER ADVOCATES, NATIONAL CONSUMER LAW CENTER,  
AND PUBLIC JUSTICE FOR LEAVE TO FILE BRIEF AS AMICI  
CURIAE IN SUPPORT OF APPELLANTS**

Pursuant to Rule 29(c) of the Nevada Rules of Appellate Procedure, Public Citizen, National Association of Consumer Advocates (NACA), National Consumer Law Center (NCLC), and Public Justice hereby move for leave to file a brief as amici curiae in support of appellants. The proposed brief is being submitted with this motion.

**INTERESTS OF THE AMICI CURIAE**

The proposed amici curiae are non-profit organizations that work to protect the rights of consumers to seek redress in court for their injuries. This case is of importance to the amici because the answer to the certified question will affect whether consumers who have been induced by a seller's fraudulent actions into

buying a product they would not otherwise have bought are able to bring claims for fraudulent concealment or for violations of the Nevada Deceptive Trade Practices Act.

Public Citizen is a national, non-profit, consumer-advocacy organization that engages in research, education, lobbying, and litigation on a wide range of public-health and consumer-safety issues. Among other things, Public Citizen fights for the rights of consumers to access civil justice; for strong health, safety, and environmental protections; and for safe, effective, and affordable prescription drugs and health care. Public Citizen often represents consumer interests in litigation, including as *amicus curiae* in the United States Supreme Court, state supreme courts, and federal and state courts of appeals.

NACA is a non-profit corporation formed in 1994 whose members are lawyers, law professors, and students whose practice or area of study involves consumer protection. NACA's mission is to promote justice for consumers by maintaining a forum for information sharing among consumer advocates and to serve as a voice for its members and consumers in the struggle to curb unfair and oppressive business practices.

NCLC is recognized nationally as an expert in consumer protection issues. For more than 51 years, NCLC has drawn on this expertise to provide information, legal research, policy analyses, and market insights to federal and state legislatures,

administrative agencies, and the courts. NCLC also publishes a twenty-one volume Consumer Credit and Sales Legal Practice Series. Many of these volumes address consumer fraud issues including Unfair and Deceptive Acts and Practices (9th Ed., 2016). A major focus of NCLC's work is to increase public awareness of unfair and deceptive practices perpetrated against low-income and elderly consumers, and to promote protections against such practices. NCLC frequently appears as amicus curiae in consumer law cases before trial and appellate courts throughout the country. NCLC has an interest in seeking strong and effective enforcement of consumer protection laws.

Public Justice is a legal advocacy organization that specializes in precedent-setting, socially significant civil litigation, with a focus on fighting corporate and governmental misconduct. The organization maintains an Access to Justice Project that pursues litigation and advocacy efforts to remove procedural obstacles that unduly restrict the ability of workers, consumers, and people whose civil rights have been violated to seek redress for their injuries in the civil court system. As part of its Access to Justice Project, Public Justice has appeared on behalf of and as amicus in support of consumers seeking to ensure the civil justice system provides remedies for their injuries.

## **REASONS WHY AN AMICUS BRIEF IS DESIRABLE**

In this case, the United States Court of Appeals for the Ninth Circuit certified to this Court the question whether, for purposes of a fraudulent concealment claim and a consumer fraud claim under NRS § 41.600, a plaintiff has suffered damages if the defendant's fraudulent actions caused the plaintiff to purchase a product or service that the plaintiff would not otherwise have purchased, even if the product or service was not worth less than what the plaintiff paid.

The proposed amici believe that their input will aid the Court in resolving the certified question. In particular, the proposed amicus brief explains that a plaintiff who, based on a defendant's fraudulent actions, has purchased a product or service that the plaintiff would not otherwise have purchased has suffered economic loss and has not received the benefit of the bargain, regardless of whether the market value of the product or service was less than the amount paid. The brief also explains that the consequences of a negative answer to the certified question would extend far beyond the facts of this case, affecting consumers who care about issues such as whether the products they buy satisfy religious requirements, are produced in accordance with fair labor or environmental standards, or were made in the United States.

Accordingly, the proposed amici request that the Court grant their motion to file an amicus brief in support of appellants.

Respectfully submitted,

/s/ Keren E. Gesund

Keren E. Gesund

Nevada Bar No. 10881

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Public Citizen, et al.

July 16, 2021

## **NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the following persons and entities as described in NRAP 26.1(a) must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Movants Public Citizen, National Association of Consumer Advocates, National Consumer Law Center, and Public Justice are nonprofit, non-stock corporations. They have no parent corporations, and no publicly held corporations have an ownership interest in them. Movants are represented by Keren E. Gesund of Gesund & Paillet, LLC. No other law firms have appeared for movants in this case or are expected to appear for them in this Court.

/s/ Keren E. Gesund  
Keren E. Gesund  
Nevada Bar No. 10881

Counsel for Movants Public Citizen,  
et al.

## **CERTIFICATE OF SERVICE**

I hereby certify that on this date, the foregoing motion was electronically filed with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the Master Service List as follows:

Lewis Brandon  
Robert Eisenberg  
Robert Waller  
Janice Michaels  
Karl Riley

I further certify that on this date I caused a copy of the foregoing motion to be served on the following counsel through first-class mail, postage pre-paid:

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