

Appeal No. 16-56307

**IN THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

Bradley Berentson, et al.

Plaintiffs-Appellees

Brian Perryman,

Objector-Appellant

v.

Provide Commerce, Inc., et al.

Defendant-Appellee

On Appeal from the United States District Court

for the Southern District of California, No. 3:09-cv-2094 BAS-WVG

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* IN SUPPORT
OF NEITHER PARTY ON BEHALF OF**

**NATIONAL LEGAL AID AND DEFENDER ASSOCIATION,
ASSOCIATION OF PRO BONO COUNSEL, LEGAL AID ASSOCIATION
OF CALIFORNIA AND TWENTY-FOUR OF ITS MEMBER
ORGANIZATIONS, CALIFORNIA BAR FOUNDATION, EQUAL RIGHTS
ADVOCATES, FAMILY AND CHILDREN'S LAW CENTER, COLUMBIA
LEGAL SERVICES, HAWAII JUSTICE FOUNDATION, LEGAL AID
CENTER OF SOUTHERN NEVADA, MONTANA JUSTICE
FOUNDATION, NORTHWEST IMMIGRANT RIGHTS PROJECT,
WASHOE LEGAL SERVICES, AND WILLIAM E. MORRIS INSTITUTE
FOR JUSTICE**

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MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*

Pursuant to Federal Rules of Appellate Procedure Rule 29(a), proposed *Amici Curiae*, the National Legal Aid and Defender Association (NLADA), the Association of Pro Bono Counsel (APBCo), the Legal Aid Association of California (LAAC) and twenty-four LAAC member organizations -- AIDS Legal Referral Panel, California Rural Legal Assistance Foundation, Center for Gender and Refugee Studies - California, Centro Legal de la Raza, Community Legal Services in East Palo Alto, Disability Rights California, Disability Rights Education and Defense Fund, Family Violence Appellate Project, Inner City Law Center, Justice & Diversity Center of The Bar Association of San Francisco, Justice in Aging, Legal Aid Foundation of Santa Barbara County, Legal Aid of Marin, Legal Aid of Sonoma County, National Center for Youth Law, National Health Law Program, National Housing Law Project, OneJustice, Pro Bono Project of Silicon Valley, Public Advocates, Public Interest Law Project, Public Law Center, San Diego Volunteer Lawyer Program, and Western Center on Law & Poverty; California Bar Foundation, Equal Rights Advocates, Family and Children's Law Center, Columbia Legal Services, Hawaii Justice Foundation, Legal Aid Center of Southern Nevada, Montana Justice Foundation, Northwest Immigrant Rights Project, Washoe Legal Services, and the William E. Morris Institute for Justice (collectively “*Amici*”) respectfully request leave of the Court

to file the accompanying brief of amici curiae. In support of this motion, amici state as follows:

1. NLADA is the largest national legal aid organization, with more than 700 program members dedicated to ensuring access to justice for the poor through the nation's civil legal aid and defender programs. APBCo is a membership organization of over 211 partners, counsel, and practice group managers who run pro bono practices on primarily a full-time basis in more than 107 of the country's largest law firms. LAAC is a statewide membership association of more than 90 public interest law nonprofits, including AIDS Legal Referral Panel, California Rural Legal Assistance Foundation, Center for Gender and Refugee Studies - California, Centro Legal de la Raza, Community Legal Services in East Palo Alto, Disability Rights California, Disability Rights Education and Defense Fund, Family Violence Appellate Project, Inner City Law Center, Justice & Diversity Center of The Bar Association of San Francisco, Justice in Aging, Legal Aid Foundation of Santa Barbara County, Legal Aid of Marin, Legal Aid of Sonoma County, National Center for Youth Law, National Health Law Program, National Housing Law Project, OneJustice, Pro Bono Project of Silicon Valley, Public Advocates, Public Interest Law Project, Public Law Center, San Diego Volunteer Lawyer Program, and Western Center on Law & Poverty; California Bar Foundation, Equal Rights Advocates, Family and Children's Law Center,

Columbia Legal Services, Hawaii Justice Foundation, Legal Aid Center of Southern Nevada, Montana Justice Foundation, Northwest Immigrant Rights Project, Washoe Legal Services, and the William E. Morris Institute for Justice, all of which provide free civil legal services to low-income individuals and communities throughout Arizona, California, Hawaii, Montana, Nevada, and Washington.

2. The central issue in this appeal is whether a class action settlement that included a *cy pres* award was appropriate. *Cy pres* awards in class action litigation provide a critical funding source for legal aid and access to justice organizations. Amici are especially concerned about a potential decrease in *cy pres* awards to legal services organizations because federal and state funding for legal aid has declined dramatically in recent years. There have also been drastic reductions in IOLTA (Interest on Lawyer Trust Accounts) funding as a result of the economic recession. Without sufficient substitute funding from sources such as *cy pres* awards, legal services organizations will not have the resources to serve needy clients and provide a critical foundation upon which law firm pro bono programs can rely to help meet the need for access to justice by the underprivileged and disadvantaged in our country.

3. Amici request leave to submit their amicus brief to highlight the need for the Court to articulate clear standards governing *cy pres* distribution in class

action settlements and explicitly recognize that legal services organizations are generally appropriate *cy pres* recipients. The proposed amici curiae brief will assist the Court by presenting a broader perspective on *cy pres* awards in class actions than is found in the briefs of the parties. The proposed amici curiae brief will address the best practices for the appropriate use of the *cy pres* doctrine in class action settlements. The proposed amici curiae brief will also address the law and the public policy issues concerning *cy pres* distributions to legal service organizations in class action settlements.

4. This case is of significant interest to Amici and their members. Amici provide a unique perspective that cannot be provided by the parties. Amici understand and can express the views and experience of nonprofit and volunteer legal services organizations across the country. No party to this case can represent the unique interests of such organizations in this significant appeal.

5. Federal Rule of Appellate Procedures Rule 29(a) provides that an amicus brief not in support of either party is to be filed within seven days after appellant's principal brief. Amici were not aware of this appeal in time to meet that May 8, 2017 deadline for this appeal; however, FRAP 29(a) also provides that the Court may grant Amici leave for later filing. This motion is submitted with the proposed brief on the same day that appellee briefs are to be filed. As the proposed amici brief does not support either party (or take a position on the district court

opinion in this case), the filing will not require the parties to submit additional briefing or delay the Court's consideration of this appeal. As discussed above, the proposed amici brief will assist the Court in addressing the critical issues surrounding *cy pres* awards in class action settlements

6. Pursuant to Ninth Circuit Rule 29-3, Amici endeavored to obtain the consent of counsel for all parties to this appeal. Counsel for plaintiffs/appellees consent to this proposed filing and do not intend to file any response. Counsel for defendant/appellee Provide Commerce takes no position on this proposed filing. Amici also contacted counsel for the objector/appellant, who do not consent to this proposed filing.

For the foregoing reasons, proposed Amici respectfully request leave to file the proposed Amici Curiae brief in support of neither party which is submitted with this motion.

Respectfully submitted,

Dated: June 30, 2017

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on June 30, 2017.

Participants in the case who are registered CMECF users will be served by the appellate CM/ECF system.

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