

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

CHERYL THURSTON,

Plaintiff,

v.

BCM FEDERAL CREDIT UNION,

Defendant.

CIVIL ACTION NO. 3:17-cv-3391-N

**MOTION OF CREDIT UNION NATIONAL ASSOCIATION AND CORNERSTONE
CREDIT UNION LEAGUE FOR LEAVE TO FILE BRIEF AS AMICI CURIAE
SUPPORTING DEFENDANT'S MOTION TO DISMISS THE COMPLAINT**

Pursuant to Local Rule 7.2(b), the Credit Union National Association (“CUNA”) and Cornerstone Credit Union League (“Cornerstone”) respectfully move for leave to file as *amici curiae* the brief appended hereto as Attachment 1 in support of Defendant BCM Federal Credit Union’s Motion to Dismiss Complaint. Defendant BCM Federal Credit Union does not oppose this motion. Plaintiff does not oppose this Motion, but has indicated an intent to reserve the right to challenge and oppose the substance of the brief. In support of their Motion, CUNA and Cornerstone state:

1. CUNA is the largest national trade association in the United States serving America’s credit unions and the only national association that advocates for the entire credit union movement, which includes both federally chartered and state chartered credit unions. With its network of affiliated state credit union associations, CUNA serves nearly 6,000 credit unions, which are owned by 110 million members of the credit unions. The Cornerstone Credit Union League (“Cornerstone”) is the nation’s largest regional credit union trade association, serving more than 500 credit unions in Arkansas, Oklahoma, and Texas. CUNA and Cornerstone advocate for the credit union industry and offers education on financial issues of critical

importance to credit union members, and assists with compliance efforts.

2. This Court has broad discretion to accept *amicus* filings. See *Gudur v. Deloitte Consulting LLP*, 512 F. Supp. 2d 920, 927 (S.D. Tex. 2007). *Amicus* filings should be allowed when “the proffered information is timely and useful or otherwise necessary to the administration of justice.” *Long v. GSD & M Idea City LLC*, No. 3:11-cv-1154-O, 2014 WL 11321670, at *4 (N.D. Tex. Aug. 8, 2014). As the premier national association representing the entire credit union movement and the largest regional association of credit unions, amici are in a unique position to provide the Court with insights and perspectives not available to the parties to the pending action. The proposed *amicus* brief, while supportive of Defendant’s position, is not duplicative of Defendant’s filing, but rather provides a broad, national perspective on the issues raised.

3. Many credit unions served by CUNA and Cornerstone are very small businesses with extremely limited staff and resources and they often serve smaller or rural local communities that may otherwise have limited options for financial services. In the United States, nearly half of all credit unions employ five or fewer full time employees. More than half have assets of less than \$50 million. Moreover, credit unions with less \$20 million in assets account for over 40% of all U.S. credit unions. Defendant BCM Federal Credit Union falls within these parameters. Credit unions, by law, serve specific groups of individuals, such as employees of a specific company, union or agency, individuals employed in a specific occupation, or residents of a particular community, and only those individuals who are within the specified group may become members of that credit union.

4. CUNA and Cornerstone have a significant interest in the outcome of this case and in others across the country seeking to hold their credit union members to nonexistent website standards. Defendant BCM Federal Credit Union is a member of both CUNA and Cornerstone. But this case is one of more than a hundred similar cases that have been filed all over the country against credit unions.. These cookie-cutter cases are brought on behalf of visually impaired individuals who claim an inability to fully and equally access the credit unions’ websites in

violation of Title III of the Americans with Disabilities Act (ADA). As is typical in these cases, Plaintiff in the instant case is not a member of BCM Federal Credit Union, nor does Plaintiff allege that she is eligible to become a member of that credit union, given the credit union's restricted field of membership as set forth in its charter. Plaintiff does not even live in this state, yet avers that her inability to access the website's information regarding the credit union's physical locations deters her from visiting them in the future. Thousands of credit unions have been the subject of strident letters demanding that they enter into settlement agreements regarding their website to meet ever evolving "voluntary" private sector website accessibility guidelines that no government agency has ever adopted. The Department of Justice, which is charged by Congress with promulgating regulations implementing the relevant sections of the ADA, has never adopted a rule that the ADA applies to websites, nor has it adopted any standards for website access, despite initiating a rulemaking in 2010 to gather information leading toward the eventual adoption of national, uniform standards. The demand letters and lawsuits across the nation are not furthering the goals of the ADA, will not lead to a set of consistent guidelines, and are sapping the limited resources of CUNA's and Cornerstone's members, as well as squandering limited judicial resources.

5. The proposed *amicus* brief of CUNA and Cornerstone is timely submitted. *See Club v. Fed. Emergency Mgmt. Agency*, No. H-07-0608, 2007 WL 3472851, at *1 n.1 (S.D. Tex. Nov. 14, 2007) ("An *amicus curiae* must file its brief . . . no later than 7 days after the principal brief of the party being supported is filed") (internal citations omitted).

6. For the foregoing reasons, CUNA and Cornerstone respectfully request that this Court grant leave to permit the filing of this Motion and their *amicus* brief, appended as Attachment 1 to this Motion.

Respectfully submitted February 21, 2018.

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CERTIFICATE OF CONFERENCE

I hereby certify that on February 20, 2018, counsel for CUNA conferred with counsel for Plaintiff. I further certify that on February 21, 2018, counsel for CUNA conferred with counsel for Defendant. Counsel for Defendant (Katrin Schatz of Jackson Lewis P.C.) indicated that they do not oppose this Motion. Counsel for Plaintiff (Scott Ferrell of Pacific Trial Attorneys) stated that he does not oppose the Motion, but reserved the right to challenge and oppose the substance of the brief.

/s/ Christine A. Samsel
Christine Samsel

CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2018, I electronically filed a true and correct copy of the foregoing **MOTION OF CREDIT UNION NATIONAL ASSOCIATION AND CORNERSTONE CREDIT UNION LEAGUE FOR LEAVE TO FILE BRIEF AS AMICI CURIAE SUPPORTING DEFENDANT’S MOTION TO DISMISS THE COMPLAINT** with the clerk of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the Court, and the electronic case filing system sent a “Notice of Electronic Filing” to all attorneys of record, who have consented in writing to accept this Notice as service of this document by electronic means.

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