

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

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA,
et al.,

Plaintiffs,

v.

THOMAS E. PEREZ, SECRETARY OF
LABOR,
and
UNITED STATES
DEPARTMENT OF LABOR,

Defendants.

Civil Action No. 3:16-cv-1476-M
Consolidated with:
3:16-cv-1530-C
3:16-cv-1537-N

**MOTION OF CONSUMER FEDERATION OF AMERICA
FOR LEAVE TO FILE A BRIEF AMICUS CURIAE
IN SUPPORT OF THE DEFENDANTS' CONSOLIDATED OPPOSITION TO
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND DEFENDANTS'
CONSOLIDATED CROSS-MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Rule 7.1 and the Court's inherent authority and discretion, Consumer Federation of America ("CFA") respectfully moves the Court to grant CFA leave to file the accompanying brief as amicus curiae in support of the Defendants, the United States Department of Labor ("DOL") and its official, Secretary Thomas E. Perez. CFA recognizes that the Court has expressed caution in accepting amicus briefing unless the purported amicus has a special interest that justifies having a say. Order at 2 [Doc. No. 63] (Aug. 8, 2016). CFA believes it meets that criteria and that its brief offers unique material that will be helpful to the Court.

Amicus curiae Consumer Federation of America ("CFA") is a nonprofit association of more than 250 state, local, and national pro-consumer organizations, founded in 1968 to represent the consumer interest through research, advocacy, and education. On behalf of its organizational members, CFA represents tens of millions of consumers from across the nation. More information about CFA's membership is available at <http://consumerfed.org/membership/>. For three decades, CFA has been a leading voice advocating strengthened protections for individual investors. CFA policy in this area is focused on ensuring that investors have a choice of appropriate investments and service providers, the information necessary to make informed choices, protection against fraud and abuse, and effective recourse when they are the victims of wrongdoing. CFA has promoted those policies before Congress, federal regulatory agencies, and state securities divisions; through participation in advisory committees to the Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA); and others, and through research on important investor protection topics that has been widely covered in the media.

CFA has made strengthening protections for retail investors when they turn to financial professionals for advice a major focus of its advocacy. Having produced research highlighting

the phenomenon of sales-based financial professionals' holding themselves out as trusted advisors and taking on an increasingly advisory role in clients' investment decision, CFA has supported policies holding all financial professionals, including sales-based financial professionals, to an appropriate standard of care when providing investment advice. Since at least 2000, when CFA filed its first formal comment letter with the Securities and Exchange Commission in support of this regulatory reform, CFA has consistently and vigorously sought to close regulatory loopholes that enable broker-dealers and insurance agents to operate as advisors without having to meet the fiduciary standard appropriate to that role. Key letters and documents advancing these policy goals are available at <http://consumerfed.org/issues/investor-protection/investment-professionals/>.

As a result of these years of research and advocacy, CFA has a deep understanding of how firms and financial professionals conduct their activities and of the different regulatory frameworks that apply to those activities. In addition, CFA has extensive expertise in the provisions of the DOL Conflict of Interest Rule and its accompanying exemptions ("Rule") and has been intimately involved throughout the rulemaking process. For example, CFA filed two detailed comment letters with the DOL in strong support of the Rule. *See* Letter from CFA to the U.S. Dept. of Labor Employee Benefits Sec. Admin. (July 21, 2015), <https://www.dol.gov/ebsa/pdf/1210-AB32-2-00660.pdf>; Letter from CFA to the U.S. Dept. of Labor Employee Benefits Sec. Admin. (August 24, 2015), <https://www.dol.gov/ebsa/pdf/1210-AB32-2-03031.pdf> (last visited August 22, 2016). In addition, CFA's director of investor protection testified at the DOL's public hearings in August of 2015. *See* U.S. Dep't of Labor, Conflict of Interest Proposed Rule Public Hr'g, <https://www.dol.gov/ebsa/regs/1210-AB32-2-Hearing.html> (last visited August 22, 2016).

CFA has a strong and special interest in the outcome of this case that justifies having a say. This Rule is the culmination of decades of advocacy dedicated to updating protections for retirement savers; CFA seeks to ensure that the Rule stands so that workers and retirees who turn to financial professionals for advice about their retirement savings finally gain the protections against conflicted advice that they so desperately need and deserve. Without the protections afforded by the Rule, retirement savers who need to make every dollar count will continue to see their nest eggs eroded, and their ability to afford a secure and independent retirement threatened, by sales-based professionals who exploit loopholes in flawed regulations in order to profit unfairly at their customers' expense.

While CFA has a clear interest in the outcome of this case, it is not partisan. CFA submits this brief consistent with its longstanding commitment to advocating for investor interests and not out of a desire to advocate for the Defendants or attack the Plaintiffs. Our hope is that the brief will prove useful to the Court. Specifically, CFA offers its knowledge of industry practices and existing regulatory requirements to rebut certain mischaracterizations that pervade the Plaintiffs' filings. CFA believes that the unique material provided will help the Court better understand the nature, scope, and prevalence of these practices and why it was appropriate for the DOL to determine that such practices demand fiduciary protections, on both legal and policy grounds.

In addition, no party will be prejudiced by the filing of this brief. The Defendants have consented to this motion and the Plaintiffs have indicated they would not oppose CFA's request for consent to file this motion.

Finally, this brief is timely and conforms to the requirements of Local Rule 7.2 of the United States District Court for the Northern District of Texas. It also complies with the

requirements of Rule 29 of the Federal Rules of Appellate Procedure, including being filed no later than seven days after principal brief of the party being supported. In this case, the Defendants' memorandum was filed on August 19th, 2016 and this brief is being filed August 26th, 2016. This timeline allowed CFA to ensure that its brief supplements rather than repeats the presentation made by the Defendants. Toward this end, CFA was careful to reduce any redundancies so as to lighten the burden on the Court's time and resources.

Conclusion

For the foregoing reasons, the motion for leave to file an amicus brief should be granted.

DATED: August 26, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this *Brief Amicus Curiae of Consumer Federation of America in Support of the Defendants' Consolidated Opposition to Plaintiffs' Motion for Summary Judgment and Defendants' Consolidated Cross-Motion for Summary Judgment* was served this 26th day of August 2016 upon counsel for all parties via the Court's CM/ECF electronic filing system.

/s/ Theodore C. Anderson
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