UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

COMMONWEALTH OF VIRGINIA ex rel. JAY JONES, Attorney General, Plaintiff, v. WILLIAM JAYSON WALLER; KEVIN ANTHONY KLINK; CROSS RIVER BANK, a New Jersey-chartered Bank; GOODLEAP, LLC, a California limited liability company; SOLAR MOSAIC LLC, by and through the Plan Administrator, Olive Advisors LLC; SUNLIGHT FINANCIAL LLC, a Delaware limited liability company; and TECHNOLOGY CREDIT UNION, a California-chartered Credit Union, Defendants.	Case No.: 3:26-cv-00039-REP

AMERICAN FINTECH COUNCIL'S MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF MOTION TO DISMISS COUNT II

In accordance with the inherent authority of this Court, amicus American Fintech Council ("AFC") respectfully requests leave to file an amicus curiae brief in support of the motion to dismiss Count II of the Amended Complaint. *See* Doc.82; Doc.83. As more fully outlined in the attached amicus curiae brief (incorporated fully herein by reference), leave to file an amicus curiae brief should be granted because, among other reasons:

- AFC's members may be directly impacted by this action, which seeks to impose liability on creditors arising from their reliance on long-established federal regulations and official agency interpretations, which have stood for 45 years. This case relates to the treatment of

"seller's points" and the rule excluding them from the finance charge disclosures under the federal Truth-in-Lending Act. The current rule excludes seller's points from finance charges in "all cases." Seller's points may be and are charged in various transactions where consumers finance the purchase of products for family, household, and personal purposes (*e.g.*, large furniture purchases, HVAC equipment, home improvement, or plastic surgery).

- AFC's members would be substantially impacted if the Court were to adopt the change in the law advocated by the Virginia Attorney General in this case. AFC's members bring a unique and differing perspective to this case that would benefit this Court and the parties based on AFC's work with different lenders and different financing programs across the consumer finance industry.

A copy of AFC's amicus curiae brief is attached hereto and fully incorporated herein.

The Court has "broad discretion in deciding whether to allow a non-party to participate as an *amicus curiae.*" *Tafas v. Dudas*, 511 F. Supp. 2d 652, 659 (E.D. Va. 2007). Amicus curiae briefs may be "allowed at the trial level where they provide helpful analysis of the law, they have a special interest in the subject matter of the suit, or existing counsel is in need of assistance." *Bryant v. Better Business Bureau,* 923 F. Supp. 720, 728 (D. Md. 1996) (internal citations omitted). However, "[a] motion for leave to file an *amicus curiae* brief ... should not be granted unless the court 'deems the proffered information timely and useful.' " *Bryant,* 923 F. Supp. at 728 (citing *Yip v. Pagano,* 606 F. Supp. 1566, 1568 (D.N.J.1985)).

As more fully shown in the attached amicus curiae brief, these factors weigh in favor of granting AFC leave to file its amicus curiae brief. AFC's members have a direct interest in the outcome of this case that also differs from the parties to the litigation itself. AFC is the largest and most diverse trade association representing financial technology (fintech) companies

and innovative banks. On behalf of over 150 member companies and partners, AFC promotes a transparent, inclusive, and customer-centric financial system by supporting responsible innovation in financial services and encouraging sound public policy.

As more fully shown in the attached amicus brief, AFC brings a unique perspective to this case and the issues raised by the parties that would benefit the Court and it should be granted leave to file its amicus curiae brief as a result. AFC supports full and accurate disclosures to consumers pursuant to the TILA and its implementing regulation, Regulation Z, and its members and other financial institutions have complied with the statute, regulations, and official interpretation for more than 50 years in providing disclosures to consumers. AFC's members rely upon TILA and Regulation Z in making credit disclosures to consumers. They rely upon agency commentary and interpretations in providing those disclosures.

This case represents an effort by a state attorney general to change the settled expectations of creditors by imposing liability on creditors whose disclosures comply in good faith with Regulation Z and the official interpretation. The Virginia Attorney General seeks to impose liability under TILA upon creditors who charge seller's points to sellers of products for offering financing programs for consumers' purchase of such products, asserting that such charges are "finance charges" that must be included in the finance charges disclosed to consumers pursuant to TILA. However, Regulation Z, adopted pursuant to TILA, provides that seller's points are excluded from finance charges, and the official interpretation provides that seller's points are excluded from the finance charge in all cases.

To assist the Court, the attached amicus curiae brief provides a brief history and purpose of TILA and Regulation Z, the treatment of sellers' points under Regulation Z and official

agency interpretations, creditors' reliance upon TILA and Regulation Z, and the effect of determining sellers' points as included or excluded from finance charge on a case-by-case basis.

For any and all of these reasons, AFC respectfully requests leave to file an amicus curiae brief in support of the motion to dismiss Count II of the Amended Complaint.

Dated: May 5, 2026

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