IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

KEITH CARROLL,	)	
Plaintiff,	)	
v.	)	Civil Action No. 1:17-cv-01205
NORTHWEST FEDERAL CREDIT UNION,	)	
Defendant.	)	

Order

THIS MATTER comes before the Court on Defendant's Motion to Dismiss Plaintiff's Original Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim.

A motion to dismiss tests the sufficiency of the complaint. See Republican Party of N.C. v. Martin, 980 F.2d 943, 952 (4th Cir. 1992). In a Rule 12(b)(6) motion to dismiss, the court must accept all well-pled facts as true and construe those facts in the light most favorable to the plaintiff. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). The complaint must provide a short and plain statement showing that the pleader is entitled to relief, Fed. R. Civ. P. 8(a)(2), and it must state a plausible claim for relief to survive a motion to dismiss, Iqbal, 556 U.S. at 679. The court should dismiss the case if the complaint does not

state a plausible claim for relief. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).

As an initial matter, the Constitution requires that a plaintiff have standing to bring a case or controversy before a federal court. The standing inquiry "ensures that a plaintiff has a sufficient personal stake in a dispute to render judicial resolution appropriate." (Friends of the Earth, Inc. v. Gaston Copper Recycling Corp., 204 F.3d 149, 153 (4th Cir. 2000)). To satisfy the case or controversy requirement of Article III, "a plaintiff must, generally speaking, demonstrate that he suffered 'injury in fact,' that the injury is 'fairly traceable' to the actions of the defendant, and that the injury will likely be redressed by a favorable decision." (Bennett v. Spear, 520 U.S. 154, 162 (1997) (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)). The injury in fact element "requires that a plaintiff suffer an invasion of a legally protected interest which is concrete and particularized, as well as actual or imminent." Friends of the Earth, 204 F.3d at 154. Where a plaintiff seeks injunctive relief, "a threatened injury must be certainly impending to constitute injury in fact." Whitmore v. Arkansas, 495 U.S. 149, 158 (1990) (internal quotation marks omitted).

In the context of the Americans with Disabilities Act ("ADA"), courts have held that a plaintiff must establish a

genuine likelihood of returning to the defendant's business, in order to demonstrate a real threat of future harm. See, e.g., Steger v. Franco, Inc., 228 F.3d 889, 893 (8th Cir. 2000); Pickern v. Holiday Quality Foods, Inc., 293 1133, 1137-38 (9th Cir. 2002). In Daniels v. Arcade, LLP, 477 Fed.Appx. 125, 129 (4th Cir. 2012), the Fourth Circuit determined there was injury in fact and likelihood of future harm where the Plaintiff could plausibly allege that the market he claimed was in violation of the ADA was in fact a place he lived close to, had previously and regularly visited, and was a place he intended to continue to visit in the future to satisfy his shopping needs.

Here, the defendant, Northwest Federal Credit Union ("Northwest FCU"), is a credit union chartered by the federal government which only includes a specific membership field. That field of membership includes those who are current or former employees of the Central Intelligence Agency (or their immediate family or household members). Plaintiff is not included in this membership field, nor has he alleged any facts in his Complaint to suggest he is a CIA agent or otherwise eligible to become a member of Northwest FCU. As a result, Plaintiff is unable to deposit money in, or obtain a loan or other services from Defendant.

Plaintiff is unable to show that he has suffered an injury in fact or that there is certain impending future harm.

Defendant cannot make this showing because he has not established that he is entitled, or would ever be entitled, to utilize any services provided by Northwest FCU. Further, the Complaint does not allege that Defendant was ever a past member of Northwest FCU - and plans to visit in the future are immaterial unless Defendant can establish he is eligible to use Northwest FCU's services. It is the plaintiff's burden to show that he is suffering a concrete and particularized, actual or imminent invasion of his personal interests, which would be resolved by a judgement in his favor. Because Defendant cannot demonstrate that he is entitled to participate in any of Northwest FCU's services, he cannot show any redressible injury.

Plaintiff's claim also fails because the website is not a place of public accommodation. Title III of the ADA prohibits discrimination in public accommodations based on disability. 42 U.S.C. §12182(a). The statute provides for a list of entities that are considered public accommodations. 42 U.S.C. § 12181(7). Notably absent from the list is the term "website". Not only is "website" not found on the list, but the statute does not list anything that is not a brick and mortar "place". Over the years Congress has extensively amended the ADA; however, at no point did Congress choose to add websites as a public accommodation.

While the Fourth Circuit has not directly taken a position on this issue, it affirmed in an unpublished opinion that under

Title II of the Civil Rights Act, "chat rooms and other online services do not constitute a place of public accommodation." Noah v. AOL Time Warner Inc., 261 F. Supp. 2d 532, 540 (E.D. Va. 2003) (Ellis, J.), aff'd 2004 U.S. App. LEXIS 5495 (4th Cir. 2004). While Noah was concerned with Title II of the ADA, the Court finds that similar reasoning is persuasive as it pertains to Title III of the ADA - a website does not constitute a place of public accommodation.

For these reasons, Plaintiff has failed to state a claim for which relief may be granted. Accordingly, it is hereby

ORDERED that Defendant's Motion to Dismiss is GRANTED and this case is DISMISSED without prejudice.

Claude M. Hilton
CLAUDE M. HILTON
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia
January 26, 2018