No. 17A-_____

IN THE
SUPREME COURT OF THE UNITED STATES

CONTEST PROMOTIONS, LLC, Applicant

v.

CITY AND COUNTY OF SAN FRANCISCO

ON APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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BENJAMIN J. HORWICH
JOSHUA PATASHNIK
Counsel of Record
MUNGER, TOLLES & OLSON LLP
560 Mission St.
27th Floor
San Francisco, CA 94105
(415) 512-4000
josh.patashnik@mto.com

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To the Honorable Anthony M. Kennedy, Associate Justice, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Pursuant to Rules 13.5 and 30.2 of the Rules of this Court, Contest Promotions, LLC respectfully requests a 30-day extension of time, to and including February 14, 2018, within which to file a petition for a writ of certiorari to review two related judgments issued by the United States Court of Appeals for the Ninth Circuit. See S. Ct. Rule 12.4. The opinion of the Court of Appeals in case number 17-15909 (9th Cir.) (App., *infra*, 1a-15a) is reported at 874 F.3d 597. The opinion of the Court of Appeals in case number 15-16682 (9th Cir.) (App., *infra*, 16a-22a) is unpublished, but is available at 2017 WL 3499800. In both cases, the Court of Appeals entered its judgment on August 16, 2017. Contest Promotions filed a timely petition for rehearing in each case. The Court of Appeals denied the petition

in case number 15-16682 on October 17, 2017 (App., *infra*, 23a), and denied the petition in case number 17-15909 on October 23, 2017 (also issuing that same day an amended opinion superseding its prior opinion) (App, *infra*, 3a). Copies of the opinions and orders denying rehearing are attached to this Application. Unless extended, the time for filing a single petition for writ of certiorari seeking review of the judgments in both cases will expire on January 16, 2018 (because January 15 is a federal legal holiday, see S. Ct. Rule 30.1).

1. This case concerns restrictions on commercial signs imposed by Article 6 of the San Francisco Planning Code. Section 602 of the San Francisco Planning Code defines "General Advertising Sign" to include any sign "which directs attention to a business, commodity, industry, or other activity which is sold, offered or conducted elsewhere than on the premises upon which the Sign is located ... and which is sold, offered or conducted on such premises only incidentally if at all." Section 611 of the Planning Code provides that "[n]o new general advertising signs shall be permitted at any location within the City as of March 5, 2002." Noncommercial signs are exempt from this ordinance. S.F. Planning Code § 603(a).

Contest Promotions, LLC is a marketing company that rents space from businesses in San Francisco and other cities, upon which it places third-party commercial signs. In 2015, Contest Promotions filed suit in U.S. District Court for the Northern District of California, asserting (among other claims) that San Francisco's restrictions on commercial signs contained in Article 6 of the Planning Code—specifically, the distinction drawn by the City between signs advertising on-

premises and off-premises commercial activity—violated the First Amendment. The district court granted San Francisco's motion to dismiss, and Contest Promotions appealed to the Court of Appeals for the Ninth Circuit. That appeal was docketed as No. 15-16682 (9th Cir.).

While that appeal was pending, the City issued several Notices of Enforcement (NOEs) in which it asserted that several of Contest Promotions' signs in San Francisco violate various provisions of Article 6 of the Planning Code. In addition, in November 2016, the City amended Section 603 of the Planning Code to exempt all noncommercial speech. Based on these new developments, also in November 2016, Contest Promotions filed a new complaint in the Northern District of California, asserting that the ordinance's distinction between commercial and noncommercial signs violated the First Amendment. The district court granted San Francisco's motion to dismiss, and Contest Promotions appealed that judgment to the Ninth Circuit as well. That appeal was docketed as No. 17-15909 (9th Cir.).

2. The Court of Appeals consolidated the two cases before a single panel for oral argument. On August 16, 2017, the court affirmed both judgments.

In case number 15-16682 (9th Cir.), the Court of Appeals held that the ordinance's restrictions on signs advertising off-premises commercial activity satisfied the commercial speech test set forth in *Central Hudson Gas & Electric Co. v. Public Service Commission*, 447 U.S. 557 (1980). The Court of Appeals held that San Francisco's "interests in [traffic] safety and aesthetics are substantial," that "regulations distinguishing between on-site and off-site advertising signs directly

advance" these interests, and that the ordinance was "not broader than necessary to achieve" those interests, even though it bans *all* new signs advertising off-premises commercial activity. ___ F. App'x ___, 2017 WL 3499800, at *2 (9th Cir. Aug. 16, 2017). In reaching this conclusion, the Court of Appeals placed dispositive weight on this Court's opinion in *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981) (plurality opinion), and on *Metro Lights, LLC v. City of Los Angeles*, 551 F.3d 898 (9th Cir. 2009), which itself relied on *Metromedia*.

In case number 17-15909 (9th Cir.), the Court of Appeals, again applying the *Central Hudson* test, held that the ordinance's distinction between commercial and noncommercial signs did not violate the First Amendment. The court, following recent Ninth Circuit precedent, first rejected Contest Promotions' argument that this Court's decisions in *Sorrell v. IMS Health Inc.*, 564 U.S. 552 (2011), and *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015), required the application of a more searching form of review than the *Central Hudson* test. 874 F.3d at 601 (citing *Retail Digital Network, LLC v. Prieto*, 861 F.3d 839, 846 (9th Cir. 2017) (en banc)). The court further held that San Francisco's distinction between commercial and noncommercial signs satisfied the *Central Hudson* test because it was adequately tailored to furthering the City's interests in aesthetics and traffic safety, given the ordinance's "statements of legislative purpose" asserting that commercial signs "in particular were 'creating a public safety hazard,' that such signs 'contribute to blight and visual clutter as well as the commercialization of public spaces,' ... and that there was 'currently an ample supply of general advertising signs within the

City.'" *Id.* at 603 (quoting S.F. Planning Code § 611(f)); see also *id.* at 604 (citing *Metromedia*, 453 U.S. at 508 (plurality opinion)). The Court of Appeals rejected Contest Promotions' argument, relying on this Court's opinion in *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410 (1993), that the ordinance violated the First Amendment because it exempted noncommercial signs despite the fact that those signs affect traffic safety and aesthetics in a manner similar to commercial signs. 861 F.3d at 602-03.

3. In December 2017, Contest Promotions retained the undersigned counsel in connection with preparing and filing a petition for writ of certiorari seeking this Court's review of the two Ninth Circuit judgments described above. The additional time sought is required in order to allow the undersigned counsel, who was not involved in this case in the district court or Court of Appeals, to become familiar with the details of the case, conduct legal research, and prepare a petition for writ of certiorari. The undersigned counsel also has a number of other professional commitments previously scheduled between now and the current due date of this petition that will require a significant investment of time, including a federal antitrust trial scheduled to commence January 29, 2018 (*Steves & Sons, Inc. v. Jeld-Wen, Inc.*, No. 3:16-cv-545-REP (E.D. Va.)), and extensive discovery and motion practice in two related pending cases, one of which is a putative nationwide class action, between two large companies (*LA Park La Brea A LLC v. Airbnb, Inc.*, No. 2:17-cv-4885-DMG-AS (C.D. Cal.); *Bay Parc Plaza Apts., L.P. v. Airbnb, Inc.*, No. 2017-3624-CA-01 (Fla. Cir. Ct., 11th Judicial Cir., Miami-Dade Cty.)).

Respectfully submitted,

By: _____
Joshua Patashnik

BENJAMIN J. HORWICH
JOSHUA PATASHNIK
Counsel of Record
MUNGER, TOLLES & OLSON LLP
560 Mission St.
27th Floor
San Francisco, CA 94105
(415) 512-4000
josh.patashnik@mto.com

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of the Rules of this Court, Applicant Contest Promotions, LLC states that it is a wholly owned subsidiary of Alchemy Media Holdings LLC, a Delaware limited liability company. No publicly held company owns 10 percent or more of the stock of Contest Promotions, LLC, either directly or indirectly.