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In the Supreme Court of the United States

JOHN TEETS, APPLICANT

v.

GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY.

**Application for an Extension of Time
to File Petition for a Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit**

To the Honorable Sonia Sotomayor,
Associate Justice of the Supreme Court of the United States and
Circuit Justice for the Tenth Circuit

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**APPLICATION FOR AN EXTENSION OF TIME TO FILE
PETITION FOR A WRIT OF CERTIORARI**

To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Tenth Circuit:

Pursuant to this Court's Rule 13.5, Applicant John Teets respectfully requests a 60-day extension of time, to and including Friday, September 20, 2019, within which to file a petition for a writ of certiorari in this case. The judgment sought to be reviewed is the decision of the United States Court of Appeals for the Tenth Circuit in *Teets v. Great-West Life & Annuity Insurance Co.*, 921 F.3d 1200 (10th Cir. 2019), *as amended on denial of reh'g* (Apr. 22, 2019) (attached as Exhibit A). The Tenth Circuit issued its decision on March 27, 2019. The court amended its opinion and denied a timely filed petition for panel rehearing and rehearing en banc on April 22, 2019 (see Exh. A at 1-2). Pursuant to this Court's Rules 13.1, 13.3, and 30.1, a petition for certiorari would be due on July 22, 2019. This application is made at least 10 days before that date. This Court's jurisdiction would be invoked under 28 U.S.C. 1254(1).

BACKGROUND

This case presents an exceptionally important question of law under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, that warrants review by this Court.

1. To protect people saving for retirement, ERISA imposes stringent rules both on entities who exercise control over the assets of an ERISA plan (fiduciaries) and on entities that do business with ERISA plans (non-fiduciary parties-in-interest). The Tenth Cir-

cuit's decision in this case severely undermines those protections, in conflict with controlling Supreme Court precedent and implicating literally trillions of dollars of individuals' hard-earned retirement savings.

2. Respondent Great-West Life & Annuity Insurance Co. offers an investment called the Key Guaranteed Portfolio Fund (the "Fund") to ERISA-governed retirement plans. Through those plans, individuals like Mr. Teets can invest in the Fund. It is undisputed that, every 90 days, Great-West has the unilateral ability to change the interest rate that participants earn from the Fund. Exh. A at 9-10. Great-West makes money by retaining the difference between the interest rate it must pay participants and the amount it earns by investing the participants' contributions in various investment instruments. Exh. A at 9.

3. Under ERISA, service providers (such as Great-West here) who transact with retirement plans are known as parties-in-interest. ERISA bars retirement plans from allowing parties-in-interest to use plan assets for their own benefit, except under certain statutorily-enumerated circumstances. 29 U.S.C. 1106(a), 1108(b). These are known as "prohibited transactions." This Court has held that parties-in-interest can be held liable for participating in prohibited transactions, and that plan participants may obtain disgorgement of the profits that a party-in-interest derives from its wrongful use of a plan asset in such a transaction. See *Harris Tr. & Sav. Bank v. Salomon Smith Barney Inc.*, 530 U.S. 238, 241-242 (2000).

4. Here, the Tenth Circuit flouted *Harris Trust*. The court recognized that the Fund contract is a plan asset and that Mr. Teets sought disgorgement of the profits that Great-West wrongfully earned from its use of that contract. Under those circumstances,

Harris Trust licenses disgorgement. But despite acknowledging the rule of *Harris Trust*, the panel held that Mr. Teets could not obtain disgorgement of Great-West's profits from using the contract. That holding cannot be squared with *Harris Trust*, and it would gut ERISA's rules governing service providers' interactions with retirement plans.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicant respectfully requests a 60-day extension of time, to and including September 20, 2019, to prepare a petition for a writ of certiorari on the important question presented by this case.

1. An extension of time is warranted because Applicant's Supreme Court counsel (1) have had a substantial number of significant obligations in the period between the Tenth Circuit's denial of rehearing en banc and the petition's current due date of July 22, 2019, and (2) have a substantial number of additional obligations between the petition's current due date and the requested deadline of September 20, 2019. These obligations include:

- a. Filing a reply brief in *Rozo v. Principal Life Insurance Co.*, No. 18-3310 (8th Cir.), on April 24, 2019;
- b. Presenting oral argument on a motion to dismiss in *Star Dialysis v. WinCo Foods Employee Benefit Plan*, No. 18 Civ. 482 (CWD) (D. Idaho), on May 8, 2019;
- c. Presenting oral argument in *Sullivan-Mestecky v. Verizon Communications, Inc.*, No. 18-1591 (2d Cir.), on May 15, 2019;
- d. Conducting significant fact discovery during May, June, and July 2019 in *Fairbairn v. Fidelity Investments Charitable Gift Fund*, No. 18 Civ. 4881

- (JSC) (N.D. Cal.), including taking and/or defending depositions on May 23, June 25, 26, 27, and July 2, 10, 11, 12, 16, 17, 18, 19, 22, 25, 26, 30, and 31, 2019;
- e. Filing a reply brief in *MGA Entertainment, Inc. v. Mattel, Inc.*, No. B289709 (Cal. Ct. App.), on June 17, 2019;
 - f. Filing an opening brief in *Salazar v. UC Regents*, No. 17-16138 (9th Cir.), on July 29, 2019;
 - g. Presenting oral argument in *Salt Lake County v. Volkswagen Group of America, Inc.*, No. 18-15937 (9th Cir.), on August 6, 2019;
 - h. Filing a merits brief before this Court in *Thole v. U.S. Bank, N.A.*, No. 17-1712, currently due on August 12, 2019 (a motion seeking an extension of time to September 11, 2019 is pending);
 - i. Filing an opening brief in *DaVita Inc. v. Amy's Kitchen, Inc.*, No. 19-15963 (9th Cir.), due on August 12, 2019; and
 - j. Filing an answering brief in *Bechard v. Broidy*, No. B293997 (Cal. Ct. App.), due on August 12, 2019.

2. No prejudice would arise from granting this extension. If this Court ultimately grants the petition, it will in all likelihood hear oral argument and issue its opinion in the October 2019 Term regardless of whether an extension is granted.

3. Under these circumstances, the requested extension is warranted to allow counsel to adequately prepare a petition on the important questions presented by this case.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests a 60-day extension of the time to file a petition for certiorari, to and including September 20, 2019.

Respectfully submitted,

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