

No. _____

IN THE
Supreme Court of the United States

DISH NETWORK, L.L.C.,
Petitioner,
v.

THOMAS H. KRAKAUER, ON BEHALF OF A CLASS OF PERSONS,
Respondents.

**APPLICATION TO THE HON. JOHN G. ROBERTS, JR.
FOR A 45-DAY EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT**

Pursuant to Rule 13.5 of the Rules of this Court, Applicant DISH Network moves for an extension of time of 45 days, up to and including October 15, 2019 (accounting for weekends and holidays pursuant to Rule 30.1), within which to file a petition for a writ of certiorari.

1. Applicant will seek review of the judgment in *Krakauer v. DISH Network, L.L.C.*, No. 18-1518, (4th Cir. May 30, 2019). A copy of the decision, dated May 30, 2019, is attached as Exhibit 1. The current deadline for filing a petition for writ of certiorari is August 28, 2019. This application is filed more than 10 days before the date the petition is due. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court is based on 28 U.S.C. § 1254(1).

2. Good cause exists for an extension. An extension is justified by the press of business on numerous other matters. The undersigned are responsible for the following engagements, all of which have imminent deadlines:

- 1) A petition for writ of certiorari in *Morris v. Mekdessie*, S. Ct. No. 19A14, due August 26, 2019.
- 2) An answering brief in *Plastic Omnium Advanced Innovation & Research v. Donghee America, Inc.*, No. 19-1634 (Fed. Cir.) due August 28, 2019.
- 3) An opening brief in *Donghee America, Inc. v. Plastic Omnium Advanced Innovation & Research*, No. 19-1733 (Fed. Cir.) due August 29, 2019.
- 4) A petition for writ of certiorari in *Torres v. Madrid*, S. Ct. No. 19A45 due August 30, 2019.
- 5) An oral argument in *DISH v. NLRB*, No. 18-60522 (5th Cir.) on September 4, 2019.
- 6) An opening brief in *Ingham v. Johnson & Johnson*, No. ED 107476 (Mo. App.) due September 6, 2019.
- 7) A reply brief in *Donghee America, Inc. v. Plastic Omnium Advanced Innovation & Research*, No. 19-1627 (Fed. Cir.) due September 16, 2019.
- 8) A reply brief in *Lanzo v. Cyprus Amax Minerals et al.*, No. A-005717-17 (N.J. App.) due September 30, 2019.
- 9) An opening brief in *Bio-Rad Laboratories v. 10x Genomics*, No. 19-2255 (Fed. Cir.) due October 8.
- 10) An oral argument in *Ward v. Apple Inc.*, No. 18-16016 (9th Cir.) on October 16, 2016.

3. In addition, an extension is warranted because this case presents substantial and important questions of law with which this Court has frequently grappled and on which the federal courts of appeals are divided.

a. This case presents the important and recurring question of whether a class member who has suffered no particularized, concrete harm has Article III standing and may be awarded damages. For numerous class members in this Telephone Consumer Protection Act (TCPA) class action that has been tried to verdict, there is no proof that the class member had any interaction whatsoever with the phone calls

that were alleged to have violated the Act. Yet, in affirming a minimum award of \$2400 to each class member, the Fourth Circuit held that no particularized showing of any concrete harm by the class members was required to establish Article III standing. Op. 14. Accordingly, that ruling squarely implicates the question this Court granted certiorari on and left unresolved in *Spokeo*—whether the “degree of risk” from a “procedural violation” is “sufficient to meet [Article III’s] concreteness requirement.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1550 (2016). In addition, it implicates the question this Court left unresolved in *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1049 (2016)—whether a class can be certified (and damages can be awarded to class members), when the class, in application, includes a significant number of uninjured persons.

b. Moreover, this case presents significant and recurring issues about whether a principal may be liable for treble damages that are punitive in nature based solely on the acts of its agent. This Court has repeatedly held that a principal may not be liable for enhanced damages based solely on the conduct of its agent. *See Lake Shore & Mich. S. Ry. v. Prentice*, 147 U.S. 101, 107 (1893); *The Amiable Nancy*, 16 U.S. (3 Wheat) 546, 558-59 (1818); *see also Kolstad v. Am. Dental Ass’n*, 527 U.S. 526, 544 (1999). The Fourth Circuit, by contrast, held that under the TCPA a principal is liable for any and all damages that could be awarded against its agent acting within the scope of the agent’s actual authority. Op. 30. That holding creates significant uncertainty for the innumerable companies that contract with others to provide services. And because the Fourth Circuit’s reasoning was not particular to

the TCPA, the decision implicates court of appeals' "sharp[] divided over whether, and under what circumstances, a principal is liable for punitive damages for the conduct of an agent or servant when a principal has neither authorized nor ratified its servant's acts." *Matter of P & E Boat Rentals, Inc.*, 872 F.2d 642, 650 (5th Cir. 1989).

An extension of time will help to ensure that the petition clearly and thoroughly presents the vitally important and complicated issues raised by the Fourth Circuit's decision.

4. For the foregoing reasons, Applicant hereby request that an extension of time be granted, up to and including October 15, 2019, within which to file a petition for a writ of certiorari.

Respectfully submitted,

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