No. 22-___

In the Supreme Court of the United States

BEST SUPPLEMENT GUIDE LLC
and SEAN COVELL
Petitioners,

v.

COUNTY OF SAN JOAQUIN,
CITY OF LODI, MAGGIE PARK
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

MOTION TO DIRECT THE CLERK TO FILE A PETITION FOR A WRIT OF CERTIORARI *NUNC PRO TUNC* NOVEMBER 15, 2022

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MOTION TO DIRECT THE CLERK TO FILE PETITION FOR
A WRIT OF CERTIORARI *NUNC PRO TUNC* NOVEMBER 15, 2022

1. Pursuant to Supreme Court Rule 21, Petitioners Best Supplement Guide LLC and Sean Covell (hereinafter "Fitness System") respectfully move the Court for an Order directing the Clerk to file the Petition for a Writ of Certiorari *nunc pro tunc* November 15, 2022.

2. The Clerk's office declined to file a Petition for a Writ of Certiorari submitted for filing by Fitness System. *See* Attachment A (November 21, 2022 letter from Clerk of Supreme Court).

a. The stated ground for rejection of the filed petition was that the petition was out of time.

b. That letter states, "Your e-filing submission is rejected."

3. The e-filing submission to which the Clerk's letter makes reference was the filing via the Court's electronic system of the Petition for a Writ of Certiorari on November 15, 2022. *See* Attachment B (November 15, 2022 electronic confirmation of receipt).

4. The petition sought this Court's relief for two reasons.

a. First, Fitness System sought this Court's review in order to rectify a decision below so far at variance with the decisions of this Court as to require its intervention;

b. Second, Fitness System to reconcile a conflict between the United States Court of Appeal for the Ninth Circuit and the United States Court of Appeals for the Sixth Circuit over whether the decision of this Court in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) imposes a *heightened* standard for the pleading of federal civil rights actions under Title 42 U.S.C. § 1983 in the context of a suit asserting violation of the Fifth Amendment right to receive just compensation as a consequence of a regulatory taking.

5. The Clerk then returned the paper copies of the petition, as well as associated

filings, declining to file the petition because out of time. *See* Attachment A (November 21, 2022 letter from Clerk of Supreme Court).

Reasons Why This Motion Should be Granted

6. Pursuant to Title 28 U.S.C. § 2101(c), "Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree."

7. Petitioners, consequently, understand that this Court's jurisdiction to grant their requested writ evanesced between the time of this Court's receipt *via electronic submission* of the petition for writ of certiorari.

8. While this Court could not create its own jurisdictional authority to review the judgment below, the Court should grant Petitioners' Motion to Direct the Clerk to file his Petition for a Writ of Certiorari *nunc pro tunc* November 15, 2022, because his petition was, as a matter of fact, received in the Office of the Clerk of the Supreme Court *via proven electronic submission* while this Court's jurisdiction to grant the requested writ still existed.

9. Undersigned counsel acknowledges that the paper filing was received in the office of the Clerk out of time, and regrets that an error resulted in the petition and related papers being mailed from the printing house out of time.

10. Nonetheless, as this Court has had occasion recently to explain:

> Federal courts may issue *nunc pro tunc* orders, or 'now for then' orders, ... to 'reflect the reality' of what has already occurred[.] ... Put colorfully, '[n]unc pro tunc orders are not some Orwellian vehicle for revisionist history—creating 'facts' that never occurred in fact.' [] Put plainly, the court 'cannot make the record what it is not.'

Roman Catholic Archdiocese of San Juan v. Feliciano, 140 S.Ct. 696, 700-01, 206 L.Ed.2d 1 (2020) (internal citations omitted).

11. In this instance, this Court would not being creating history, by granting the instant motion.

a. That is, the Court would not be fictitiously affirming as timely the untimely receipt of the paper copies of the petition.

b. Rather, the Court would be confirming that its receipt *via electronic submission* constituted substantial compliance with the rules and within the time required by law.

Conclusion

For the foregoing reasons, this Court should grant Fitness System's Motion to Direct the Clerk to file his Petition for a Writ of Certiorari *nunc pro tunc* November 15, 2022.

Dated: December 2, 2022

Respectfully submitted,

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ATTACHMENT A

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

November 21, 2022

James M. Henderson
James Henderson Law Offices
3125 Burgaw Hwy Lot 3
Jacksonville, NC 28540

RE: Best Supplement Guide LLC, et al v. County of San Joaquin, et al.
USCA9 No. 20-17362

Dear Mr. Henderson:

The above-entitled petition for a writ of certiorari was postmarked November 16, 2022 and received November 18, 2022. The papers are returned for the following reason (s):

The petition is out-of-time. The date of the lower court judgment or order denying a timely petition for rehearing was August 17, 2022. Therefore, the petition was due on or before November 15, 2022. Rules 13.1, 29.2 and 30.1. When the time to file a petition for a writ of certiorari in a civil case (habeas action included) has expired, the Court no longer has the power to review the petition.

Your e-filing submission is rejected.

Sincerely,
Scott S. Harris, Clerk
By:

Susan Frimpong
(202) 479-3039

Enclosures

ATTACHMENT B

Welcome James Matthew Henderson | Sign Out

Summary

* Your Electronic Filing was submitted on 11/15/2022 3:04 PM.

Petition for a Writ of Certiorari - Federal

Payment: $300.00
Payment Type: Check **Payment #**

Last Updated Date:

Petitioner:
Best Supplement Guide LLC, et al.

Respondent:
County of San Joaquin, et al.

U.S. Court of Appeals:
United States Court of Appeals for the Ninth Circuit

Case Number(s):
20-17362

Court of Appeals Decision Date:
7/12/2022

Did the Court of Appeals deny a timely petition for rehearing?
Yes

Rehearing Denied Date:
8/17/2022

U.S. District Court:
United States District Court for the Eastern District of California

Is this a Capital Case?

No

Attorney

James Matthew Henderson

Party Name:

Best Supplement Guide LLC, et al.

Firm:

Address:

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Notifications

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stephanie@chavezochoalaw.com

Documents

Petition - Fitness System Petition For Writ.pdf

Virus Scan Completed

Supreme Court of the United States

CERTIFICATE OF SERVICE

I hereby certify that on December __, 2022, a copy of the foregoing Petitioners' Motion to Direct the Clerk to File the Petition for Writ of Certiorari Nunc Pro Tunc November 15, 2022 was served by electronic mail and by depositing same, sufficient first class United States postage prepaid and affixed, upon the following:

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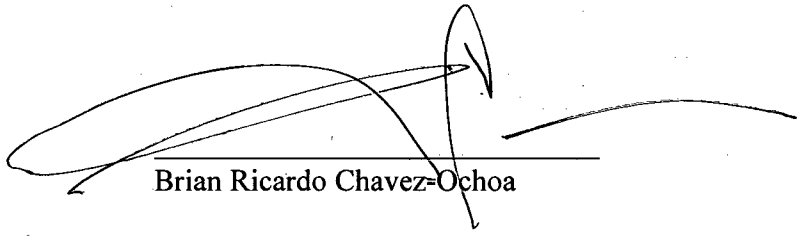

Brian Ricardo Chavez-Ochoa