

No. 23A791

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IN THE  
SUPREME COURT OF THE UNITED STATES

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MARK HABELT, INDIVIDUALLY AND ON BEHALF  
OF OTHERS SIMILARLY SITUATED,

*Applicant,*

v.

IRHYTHM TECHNOLOGIES, INC., ET AL.,

*Respondents.*

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

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APPLICATION FOR SECOND EXTENSION OF TIME  
TO FILE A PETITION FOR A WRIT OF  
CERTIORARI

JOSHUA B. SILVERMAN  
OMAR JAFRI  
JENNIFER PAFITI  
JEREMY A. LIEBERMAN  
CHRISTOPHER P.T. TOUREK  
POMERANTZ LLP  
*10 S. LaSalle Street Ste. 3505  
Chicago, IL 60603*

XIAO WANG  
*Counsel of Record*  
UNIVERSITY OF VIRGINIA SCHOOL OF  
LAW SUPREME COURT LITIGATION  
CLINIC  
*580 Massie Road  
Charlottesville, VA 22903  
(434) 924-8956  
x.wang@law.virginia.edu*

JEFFREY C. BLOCK  
JACOB WALKER  
MARK BYRNE  
BLOCK & LEVITON, LLP  
*260 Franklin Street Ste. 1860  
Boston, MA 02110*

**APPLICATION FOR SECOND EXTENSION OF TIME IN WHICH TO FILE A  
PETITION FOR A WRIT OF CERTIORARI**

TO: The Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, Applicant Mark Habelt, individually and on behalf of others similarly situated, respectfully requests an additional extension of twelve (12) days to file a petition for a writ of certiorari in this case. The U.S. Court of Appeals for the Ninth Circuit issued its decision on October 11, 2023. *Habelt v. iRhythm Techs., Inc.*, 83 F.4th 1162 (9th Cir. 2023); *see also* App. Exh. 2. The Ninth Circuit denied a petition for rehearing on December 6, 2023. App. Exh. 1. By order dated February 27, 2024, Justice Kagan extended the time for filing a petition of certiorari from March 5, 2024, to April 4, 2024. With the requested extension, the petition would be due on April 16, 2024. This application is being filed more than ten days before the petition is due. The jurisdiction of this Court shall be invoked under 28 U.S.C. § 1254(1). In support of this application, Applicant states:

1. Mark Habelt is a retail investor who bought shares in digital healthcare company iRhythm Technologies, Inc. He suffered significant financial losses after iRhythm received a lower-than-expected Medicare reimbursement rate for its core product. Habelt filed suit on behalf of himself and similarly situated investors, alleging that iRhythm misled investors in the months leading up to the

reimbursement rate announcement. As required by the Private Securities Litigation Reform Act (PSLRA), the district court sought motions for appointment of a lead plaintiff and, after reviewing these motions, appointed as lead plaintiff an institutional investor with the largest financial loss. Habelt, though, remained a named plaintiff in the suit, and was listed on the caption of every subsequent filing. When the district court dismissed the case with prejudice, the appointed lead plaintiff declined to seek an appeal. Habelt, with the lead plaintiff's consent, filed an appeal on behalf of himself and the class. A divided Ninth Circuit panel dismissed Habelt's appeal for lack of standing, ruling that he lacked party status and did not meet the requirements for non-party appellate standing.

2. This case is a serious candidate for review. The decision below deepens a circuit split over the proper interpretation of Rule 10(a) of the Federal Rules of Civil Procedure. That Rule provides that “[t]he title of the complaint must name all the parties” and, consistent with this requirement, federal courts generally hold that the case caption deserves “considerable weight” when evaluating party status. *See, e.g., Abraugh v. Altimus*, 26 F.4th 298, 303 (5th Cir. 2022). However, the circuits are split over when, if ever, it is appropriate to look beyond the caption when identifying parties not named in the case caption. At least four circuits—the Seventh, Eighth, Tenth, and Eleventh—look past the caption when evaluating *defendant* party status. *See Whitley v. U.S. Air Force*, 932 F.2d 971, 971 (7th Cir. 1991); *Greenwood v. Ross*, 778 F.2d 448, 451–52 (8th Cir. 1985); *Mitchell v. Maynard*, 80 F.3d 1433, 1441 (10th Cir. 1996); *Lundgren v. McDaniel*, 814 F.2d 600, 604 (11th Cir. 1987).

Conversely, the Second and Sixth Circuits look beyond the caption when determining *plaintiff* party status. See *Hernandez-Avila v. Averill*, 725 F.2d 25, 28 (2d Cir. 1984); *Blanchard v. Terry & Wright, Inc.*, 331 F.2d 467, 469 (6th Cir. 1964). Taking the latter approach, the Ninth Circuit set aside Habelt’s inclusion in the caption as a named plaintiff when ruling that he lost his party status, thereby precluding his ability to appeal. See App. Exh. 2 at 11a (“Beyond an individual’s mere inclusion in the caption, the more important indication of whether [he] is a party to the case are the allegations in the body of the complaint.”) (citation omitted).

3. The Ninth Circuit’s decision also implicates a split over the proper criteria for courts to consider when evaluating whether a nonparty has standing to appeal. In a dissent, Judge Bennett observed that other circuits assess non-party appellate standing differently from the Ninth Circuit. App. Exh. 2a at 22a–24a (Bennett, J., dissenting). Most circuits evaluate some combination of the following: (1) whether the nonparty participated in lower court proceedings; (2) whether the equities weigh in favor of hearing the nonparty’s appeal; and (3) whether the nonparty has an interest that is affected by the lower court’s decision. But the Ninth Circuit is the only circuit to employ a test that does not consider whether the outcome of an appeal would affect a nonparty’s interests, a factor that Judge Bennett concluded would favor hearing Habelt’s appeal.

4. Other courts of appeals have taken notice of the split regarding nonparty appellate standing. See *Kimberly Regenesis, LLC v. Lee County*, 64 F.4th 1253, 1262 (11th Cir. 2023) (noting that “[o]ur sister circuits have adopted various tests for

assessing when it is that a nonparty (who hasn't intervened) may appeal"); *Microsystems Software, Inc. v. Scandinavia Online AB*, 226 F.3d 35, 42 (1st Cir. 2000) ("Some courts have recognized exceptions to the 'only a party may appeal' rule in analogous cases . . . To the extent that these cases are authority for the appellants' position, we respectfully decline to follow them."); *see also Davis v. Scott*, 176 F.3d 805, 807 (4th Cir. 1999); *Home Products Int'l, Inc. v. U.S.*, 846 F. App'x 890, 894 (Fed. Cir. 2021).

5. In sum, this case presents substantial and recurring questions on which the courts of appeals are divided. As a result of these splits, there is a reasonable prospect that this Court will grant the petition, such that it warrants additional time for these important questions to be fully addressed. Respondent has no objection to this additional request for an extension of time.

6. Mr. Habelt's prior counsel and the University of Virginia Supreme Court Litigation Clinic are working diligently to prepare the petition but need additional time to adequately complete and file Applicant's petition. This month, the Clinic has filed petitions for a writ of certiorari in *Spencer v. County of Harrison, Texas* (23-972) on March 1, 2024; in *Cunningham v. Cornell University* (23-1007) on March 11, 2024; and in *Ames v. Ohio Department of Youth Services* (23-1039) on March 18, 2024. The Clinic also prepared to file a petition for a writ of certiorari in *Montoya v. United States* (23A776); however, Ms. Montoya very recently decided not to seek this Court's review and, after extensive discussion, has opted to pursue alternative remedies. In

light of the foregoing circumstances, the Clinic would face significant challenges completing the petition by the current due date.

7. In addition, both Mr. Jafri and Mr. Walker, Habelt's counsel before the Ninth Circuit, face several overlapping deadlines in other matters during the time for preparation of a petition for writ of certiorari in this case, including presenting oral argument in *Zahabi v. Fisker Inc.* (No. 2:23-cv-09976 (C.D. Cal.)), filing briefs in *Cai v. Eargo, Inc.* (No. 23-03470 (9th Cir.)), continuing motions practice in *Li v. Spirit AeroSystems Holdings, Inc.* (No. 1:23-cv-03722 (S.D.N.Y.)), and preparing for a class certification hearing in *Sayce v. Forescout Technologies, Inc.* (No. 3:20-cv-00076 (N.D. Cal.)).

For these reasons, Applicant requests this Court grant an extension of twelve days to and including April 16, 2024, within which to file a petition for a writ of certiorari in this case.

Respectfully submitted,

\_\_\_\_\_/s/ Xiao Wang\_\_\_\_\_

JOSHUA B. SILVERMAN  
OMAR JAFRI  
JENNIFER PAFITI  
JEREMY A. LIEBERMAN  
CHRISTOPHER P.T. TOUREK  
POMERANTZ LLP  
*10 S. LaSalle Street Ste. 3505  
Chicago, IL 60603*

JEFFREY C. BLOCK  
JACOB WALKER  
MARK BYRNE  
BLOCK & LEVITON, LLP  
*260 Franklin Street Ste. 1860  
Boston, MA 02110*

XIAO WANG  
*Counsel of Record*  
UNIVERSITY OF VIRGINIA SCHOOL OF  
LAW SUPREME COURT LITIGATION  
CLINIC  
*580 Massie Road  
Charlottesville, VA 22903  
(434) 924-8956  
x.wang@law.virginia.edu*

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