

No. \_\_\_\_\_

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In The  
**Supreme Court of the United States**

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HI-TECH PHARMACEUTICALS, INC.; JARED WHEAT,  
individually and as officers of the corporations; STEPHEN SMITH,  
individually and as officers of National Urological Group, Inc., and  
National Institute for Clinical Weight Loss, Inc.; NATIONAL  
UROLOGICAL GROUP, INC. d.b.a Warner Laboratories; et al.,

Applicants,

v.

FEDERAL TRADE COMMISSION; CERTUSBANK, N.A.,

Respondents.

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**APPLICATION FOR EXTENSION OF TIME TO FILE PETITION  
FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE ELEVENTH CIRCUIT**

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TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE AND CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT:

Under Supreme Court Rule 13.5, Applicants Hi-Tech Pharmaceuticals, Inc., Jared Wheat, and Stephen Smith respectfully request a 60-day extension of time, to and including January 26, 2024, to file a petition for writ of certiorari in this case.

1. No publicly held company owns 10% or more of Applicant Hi-Tech Pharmaceuticals, Inc. Applicants Jared Wheat and Stephen Smith are natural individuals.

2. This Court has jurisdiction under 28 U.S.C. § 1254(1) from the entry of a final judgment by the United States Court of Appeals for the Eleventh Circuit.

3. The final judgment sought to be reviewed was entered in the United States Court of Appeals for the Eleventh Circuit on August 29, 2023. *FTC v. Nat'l Urological Grp., Inc.*, 80 F.4th 1236 (11th Cir. 2023). Genuine copies of the opinion and judgment are filed with this application in an Appendix. No petition for rehearing was filed.

4. The petition for certiorari is currently due on or before November 27, 2023. This application is filed more than 10 days before that due date. S. Ct. R. 13.5 & 30.2.

5. The Applicants' joint petition for a writ of certiorari will address two important issues regarding the extent of the Federal Trade Commission's powers and the viability of seeking relief from a judgment under Federal Rule of Civil Procedure 60(b)(6) based solely on a major change in the law.

First, in *AMG Capital Management, LLC v. Federal Trade Commission*, 141 S. Ct. 1341 (2021), this Court held the Commission lacks the power to ask for or to obtain equitable monetary remedies directly in court under the permanent-injunction provision of Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). Instead, the FTC must first file an administrative action. That ruling eliminated the entire statutory basis for the Commission's decades-long consumer-redress program, which had yielded equitable monetary awards totaling billions of dollars. Here, Applicants were held in contempt of a permanent injunction entered under Section 13(b) of the Act. No administrative action was ever filed. The Commission sought and obtained, as a contempt remedy, \$40 million in consumer redress and disgorgement for violation of the FTC Act—the

same kind of equitable monetary remedy *AMG Capital* says the Commission may not obtain in court absent an underlying administrative proceeding. Applicants' petition will address whether the Commission may seek and obtain indirectly the same kind of remedy that *AMG Capital* says the Commission may not seek and obtain directly. The answer should be no.

Second, Applicants sought but were denied relief from the contempt judgment under Federal Rule of Civil Procedure 60(b)(6). The federal circuits are deeply split over whether a change in the law alone can constitute exceptional circumstances warranting relief under Rule 60(b)(6). Dicta in cases decided by this Court strongly indicate that a significant enough change in the law can suffice to warrant relief under Rule 60(b)(6). See *Gonzalez v. Crosby*, 545 U.S. 524, 536 & n.9 (2005); *Agostini v. Felton*, 521 U.S. 203, 239 (1997). Were the Court to agree that *AMG Capital* prohibits the FTC from obtaining the contempt remedy it sought and obtained here, the Court would have to decide whether relief is available to Applicants under Rule 60(b)(6) based on the legal sea-change wrought by *AMG Capital*. The answer should be yes.

6. "For good cause, a Justice may extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days." Sup. Ct. R. 13.5. There is good cause for granting an extension of time for the following reasons.

First, counsel for Applicants have significant professional obligations during the period in which the petition would otherwise need to be prepared. Counsel of record for Applicants must prepare for oral argument in the Tennessee Supreme Court, *Robert L. Trentham v. Mid-America Apartments, LP, et al.*, Case No. M2021-01511-

SC-R11-CV, which was only recently set for argument. Counsel of record has an appellee brief due in late November in the United States Court of Appeals for the Eleventh Circuit, in *Jackson National Life Insurance Company v. Sterling Crum*, Case No. 23-13192, and an appellee brief due in December in the United States Court of Appeals for the Sixth Circuit, in *Joey Harmon v. Unum Life Insurance Company of America, et al.*, Case No. 23-5619. Counsel of record is also Vice-President of the Tennessee Board of Law Examiners and must prepare for and preside over evidentiary hearings set in early December. Because the petition will address complex matters of public importance, additional time will enable Applicants to better assist the Court.

Second, Applicants have added an attorney to help prepare the petition, but that attorney will require time to get up to speed on the record, which involves over 1,100 docket entries spanning a 19-year case history.

Third, Applicants have been informed by their desired printing service that its caseload will make it impossible to complete printing services in time for the petition to be filed timely under the current due date.

7. Counsel of Record for Applicants contacted counsel for the Federal Trade Commission and the Office of the Solicitor General of the United States and certifies that the government does not oppose the extension of time sought by this application.

8. Applicants Hi-Tech Pharmaceuticals, Inc., Jared Wheat, and Stephen Smith respectfully request the entry of an order granting each of them an extension of 60 days in which to file a joint petition for writ of certiorari. The extension, if granted,

would change the due date for filing a petition for writ of certiorari to and including Friday, January 26, 2024.

Dated: November 8, 2023

Respectfully submitted,

*s/ Robert F. Parsley*

Robert F. Parsley  
*Counsel of Record*  
MILLER & MARTIN PLLC  
832 Georgia Ave., Suite 1200  
Chattanooga, TN 37402  
Telephone: (423) 785-8211  
bob.parsley@millermartin.com

*Counsel for Applicants Hi-Tech Pharmaceuticals, Inc. & Jared Wheat*

E. Vaughn Dunnigan  
2897 N Druid Hills Road  
Suite 142  
Atlanta, GA 30329  
Telephone: (404) 663-4291  
evdunnigan@hotmail.com

*Counsel for Applicant Stephen Smith*