IN THE
SUPREME COURT OF THE UNITED STATES

No. ___

UNITED STATES OF AMERICA EX REL. GWEN THROWER,

Applicant,

v.

ACADEMY MORTGAGE CORPORATION,

Respondent.

APPLICATION TO THE HON. ELANA KAGAN FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Pursuant to Supreme Court Rule 13(5), Gwen Thrower hereby moves for an extension of time of 30 days, to and including September 25, 2026, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be August 26, 2026.

In support of this request, Applicant states as follows:

1. The United States Court of Appeals for the Ninth Circuit rendered its decision on April 6, 2026 (Exhibit 1), and denied a timely petition for rehearing on May 28, 2026 (Exhibit 2). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. This case presents a single important question of law: Does post-judgment interest on attorneys' fees under 28 U.S.C. §1961 run from when a final judgment conclusively establishes a plaintiff's entitlement to those fees under a

statutorily mandated fee-shifting provision, or does it begin to accrue only once the court specifies the precise amount of fees to be collected.

3. Applicant is a mortgage underwriter and former employee of Respondent Academy Mortgage Corporation—a mortgage lender that participates in residential mortgage insurance programs run by the Federal Housing Administration. *See* Ex.1 at 4; *see also United States v. Acad. Mortg. Corp.*, 968 F.3d 996, 1000-01 (9th Cir. 2020). Nine years ago, Applicant sued Respondent under the False Claims Act ("FCA"), alleging that it had engaged in policies and practices to fraudulently certify compliance with the Federal Housing Administration's programs. Ex.1 at 4; *Acad. Mortg. Corp.*, 968 F.3d at 1001. The government declined to intervene, and Applicant spent the next seven years litigating the case. After years of extensive litigation, including comprehensive discovery, the parties reached a settlement in August 2022. As part of the settlement, Respondent agreed to pay $38.5 million to resolve the FCA allegations, with roughly $27 million going to the United States Treasury and the rest going to Applicant. Ex.1 at 4.

4. In light of that settlement, on January 19, 2023, the parties filed a joint stipulation of dismissal under Federal Rule of Civil Procedure 41(a)(1). Although the FCA mandates that an individual who successfully settles an FCA claim is entitled to attorneys' fees, the parties recognized that they were likely to disagree over the specific amount of fees to which Applicant was entitled. Accordingly, their stipulated dismissal provided that Applicant's claim for reasonable expenses and attorneys' fees "shall not be dismissed and shall remain pending." CA9.ER-216. The parties also

proposed a schedule for continued proceedings to determine the amount of fees owed by Respondent. The parties agreed that they would meet and confer, and, if unable to reach an agreement, to brief the dispute by mid-July 2023. CA9.ER-210. Eight days later, on January 27, 2023, the district court approved the stipulation and entered the parties' proposed order with the stipulated terms (the "January 2023 dismissal order"); it also adopted the parties proposed schedule for determining the attorneys' fees.

5. What should have been a straightforward determination of reasonable fees turned into months of additional disputes and delays. After an unsuccessful conferral period, Applicant filed her motion for reasonable fees and expenses on May 31, 2023. Although a hearing on the issue was originally set for July 27, 2023, it was repeatedly postponed at Respondent's request. After first moving for an extension to file its opposition, Respondent sought post-judgment discovery. Next, after Applicant objected to some of Respondent's more baseless discovery requests, Respondent sought additional briefing on the scope of discovery and moved to compel production of "all raw time entries and associated metadata" from Applicant's counsel. CA9.ER-77. Both the magistrate judge and the district court rejected Respondent's motion because it gave "no valid reason for this additional data." CA9.ER-139. A hearing on the fees issues was not held until January 11, 2024. Two weeks later, Respondent again requested a further round of supplemental briefing. On May 31, 2024—sixteen months after the January 2023 dismissal order—the court finally determined the precise amount of fees owed and awarded Applicant roughly $8.5 million in attorneys'

fees and expenses (the "May 2024 fees determination"). With that award finalized, the parties turned their attention to determining the proper amount of post-judgment interest.

6. As Applicant explained to the district court, the proper accrual date for determining post-judgment interest was January 27, 2023—the date the court ordered dismissal. Under 28 U.S.C. §1961(a), post-judgment interest "shall be allowed on any money judgment in a civil case recovered in a district court" and "shall be calculated from the date of the entry of the judgment." 28 U.S.C. §l961(a). This includes post-judgment interest for attorneys' fees. *See Associated Gen. Contractors of Ohio, Inc. v. Drabik*, 250 F.3d 482, 485 (6th Cir. 2001). The point of post-judgment interest is to compensate the successful plaintiff for being deprived of the use of the funds to which she was legally entitled. *See Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 835 (1990). Accordingly, post-judgment interest for attorneys' fees accrues from the "date of the entry of the judgment" entitling a party to attorneys' fees. That is true even if the relevant judgment reserves for later decision the precise amount of fees to be awarded. As a majority of circuits have recognized, "attorney fees accrue interest from the date of the merits judgment that establishes the prevailing party's unconditional entitlement to such fees." *Drabik*, 250 F.3d at 486; *see also BankAtlantic v. Blythe Eastman Paine Webber, Inc.*, 12 F.3d 1045, 1052-53 (11th Cir.1994); *Jenkins v. Missouri*, 931 F.2d 1273, 1275 (8th Cir. 1991); *Mathis v. Spears*, 857 F.2d 749, 760 (Fed. Cir. 1988); *Copper Liquor, Inc. v. Adolph Coors Co.*, 701 F.2d 542, 543 (5th Cir.1983) (en banc) (per curiam). Indeed,

the Ninth Circuit itself has held that post-judgement interest "runs from the date that entitlement to fees is secured, rather than from the date that the exact quantity of fees is set." *Friend v. Kolodzieczak*, 72 F.3d 1386, 1391-92 (9th Cir. 1995).

7. Because post-judgment interest runs from entry of judgment securing a plaintiff's entitlement to attorneys' fees, Applicant's post-judgment interest began accruing after the January 2023 dismissal order. Under the FCA, a successful relator "shall … receive an amount for reasonable expenses … plus reasonable attorneys' fees and costs." 31 U.S.C. §3730(d)(2). This includes a person "settling the claim." *Id.* Under this mandatory fee-shifting scheme, upon successfully settling an FCA claim, a plaintiff necessarily and automatically secures her entitlement to attorneys' fees. *See United States ex rel. Lefan v. Gen. Elec. Co.*, 397 F.App'x 144, 152 (6th Cir. 2010). Accordingly, the January 2023 dismissal order confirming the settlement and dismissing the FCA claim was the "entry of … judgment" specified in §1961(a) that started the post-judgment interest accrual clock. Although the precise quantity of fees was yet to be determined, once the court dismissed the case, Applicant was immediately and "unconditionally entitle[d] … to reasonable attorney fees." *Drabik*, 250 F.3d at 495.

8. For its part, Respondent has never disputed that Applicant was entitled to reasonable attorneys' fees immediately upon entry of the January 2023 dismissal order. *See* CA9.ER-153 (conceding that Respondent "does not contest the entitlement to fees as a result of the settlement, the statute makes that clear"). Nor has Respondent argued that, to constitute a "judgment" under §1961(a), the district court

must quantify the precise amount of fees awarded. To the contrary, Respondent admitted that post-judgment interest should run from "the date of the award" of fees, even if "the date of the quantification of the award" is later. *See* CA9.Dkt.15.1 at 16. Instead, Respondent's only argument was that the January 2023 dismissal order was not a "judgment" under §1961(a) because it did not explicitly mention Applicant's fee entitlement. But it did not need to; everyone recognized that, as a result of the settlement, Applicant was necessarily and automatically entitled to such fees under the FCA. By operation of law, once the district court ordered dismissal, Applicant's entitlement to attorneys' fees was secured as a matter of statutory right. *See Lefan*, 397 F.App'x at 152. Nevertheless, Respondent maintained that because the January 27 dismissal order did not contain the magic word "entitlement," post-judgment interest did not start until sixteen months later, when the district court entered its May 2024 fees determination.

9. The district court was persuaded by Respondent's magic-word requirement and held that post-judgment interest on Applicant's attorneys' fees only began to accrue after the May 2024 fees determination. The court acknowledged that "a specific monetary award for fees is not required to start the running of post-judgment interest if the court rules that the plaintiff is unconditionally entitled to fees," but it held that "no such unconditional entitlement was enunciated in [its] January 27 [Dismissal] Order." CA9.ER-7. Ignoring the mandatory fee-shifting scheme of the FCA that operates as a matter of law, the district court concluded that Applicant did not become "legally entitled to fees … until the May 31 Order." *Id.* By

adopting Respondent's flawed theory, the district court improperly allowed Respondent to retain the time value of millions of dollars and unfairly reduced Applicant's recovery of attorneys' fees by hundreds of thousands of dollars.

10. The Ninth Circuit did not adopt Respondent's and the district court's erroneous interpretation of §1961(a) as containing a hidden magic-word requirement. But it committed an equally egregious error. Accepting that Applicant's entitlement to attorneys' fees was established immediately upon entry of the January 2023 dismissal order, the Ninth Circuit nevertheless affirmed the district court because it held that there is no "judgment" on fees until a court sets "a definite and certain designation of the amount which plaintiff is owed by defendant." Ex.1 at 10. In other words, the Ninth Circuit reasoned that even though the January 2023 dismissal order undisputedly established Applicant's legal entitlement to attorneys' fees, she had no right to recover post-judgment interest on those fees until after the court spent an additional sixteen months determining their precise amount. In reaching that conclusion, the Ninth Circuit relied on an inapposite Third Circuit case, a wooden and ahistorical interpretation of the term "money judgment," and the nonsensical notion that a party cannot suffer the loss of being deprived the use of funds unless it knows the precise amount of funds owed to it. *See* Ex.1 at 7-10. None of that remotely justifies departing from the ordinary meaning of §1961(a), which contemplates that post-judgment interest should run from the entry of a judgment establishing a party's entitlement to the fees. Under the Ninth Circuit's new rule, even after a plaintiff has confirmed her entitlement to a fee award, the defendant will retain the full benefit of

those funds—which rightfully belong to the plaintiff—until the court eventually quantifies that award through subsequent collateral proceedings. That approach penalizes a successful plaintiff and incentivizes opponents to delay fee quantification for as long as possible—just as Respondent did here. That is precisely the opposite of what Congress sought to accomplish with §1961(a).

11. The Ninth Circuit openly acknowledges that the decision below squarely departs from the holdings of the Fifth, Sixth, Eighth, Eleventh, and Federal Circuits—all of which hold that a "judgment that unconditionally entitles the prevailing party to reasonable attorney fees" starts the interest accrual clock. *Drabik*, 250 F.3d at 494; *see* Ex.1 at 12-13 (collecting cases and acknowledging split). On the short side of the split, the decision below joins the Third and Tenth Circuits. *See Eaves v. Cnty. of Cape May*, 239 F.3d 527, 531 (3d Cir. 2001) (adopting minority approach)*; MidAmerica Fed. Sav. & Loan Ass'n v. Shearson/Am. Express, Inc.*, 962 F.2d 1470, 1476 (10th Cir. 1992) (same). In fact, the Ninth Circuit's decision even departs from its own precedent, which recognized that post-judgement interest "runs from the date that entitlement to fees is secured, rather than from the date that the exact quantity of fees is set." *Friend*, 72 F.3d at 1391-92. The panel below justified its overruling of panel precedent by dismissing *Friend* as not "precedential." Ex.1 at 11-12. Precedential or not, the earlier Ninth Circuit opinion—as well as a majority of other circuits—have it right.

12. Applicants' counsel, Paul D. Clement was not involved in the proceedings below and was only recently retained to represent Applicant in preparing

a petition for certiorari to this Court. Applicant's counsel accordingly requires additional time to review the record of the proceedings below and the applicable precedent in order to prepare and file a petition that will best present the issues for this Court's review.

13. Mr. Clement also has substantial briefing obligations between now and August 26, 2026, including a petition for rehearing in *Bodin v. New Orleans*, No. 25-30524 (5th Cir.) due on August 19, 2026, and three briefs due on August 20, 2026: a response brief in *Exxon Mobil v. Bonta*, No. 26-40106 (5th Cir.); a petition for writ of certiorari in *Herridge v. Chen*, (U.S.); and a petition for writ of certiorari in *Philip Morris USA Inc. v. Fontaine*, No. 25A1451 (U.S.).

WHEREFORE, for the foregoing reasons, Applicant requests that an extension of time to and including September 25, 2026, be granted within which Applicant may file a petition for a writ of certiorari.

Respectfully submitted,

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