IN THE SUPREME COURT OF THE UNITED STATES

No. 25A____

BRENDA CRISTINE BARRY; ERIC CHRISTOPHER CANNON;
AND CALEB AUSTIN MOODY (DBA SKY STONE),
Applicants,
v.
UNITED STATES SECURITIES AND EXCHANGE COMMISSION,
Respondent.

APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

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

Pursuant to 28 U.S.C. § 2101(c) and this Court's Rule 13.5, Applicants Brenda Cristine Barry, Eric Christopher Cannon, and Caleb Austin Moody (dba Sky Stone) respectfully request a 60-day extension of time, to and including November 8, 2026, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in *Securities and Exchange Commission v. Barry*, No. 23-2699. The court of appeals issued its decision and entered judgment on August 11, 2025. The petition for rehearing en banc was timely filed on October 3, 2025, and the court denied that petition on June 11, 2026. The petition for a writ of certiorari is currently due on September 9, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1). A copy of the court of appeals' opinion is attached as Exhibit A. A copy of the court of appeals' order denying Applicants' petition for rehearing en banc is attached as Exhibit B.

There is good cause for an extension. Applicants anticipate filing a petition that demonstrates a profound error in the Ninth Circuit's application of this Court's decision in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946), on the question of whether life settlement arrangements are subject to federal securities laws. As the court of appeals acknowledged, there is an existing circuit split on this question. Applicants' counsel requires additional time to prepare a certiorari petition that addresses the important issues raised by this split and the decision below in a way that will be most helpful to the Court. An extension will also enable counsel to consider adequately the implications of this Court's recent decision in *Sripetch v. SEC*, 608 U.S. ___, 146 S. Ct. 1403 (2026), on a separate question of when a court may impose the remedy of disgorgement. An extension is in any event warranted in light of other professional and personal obligations of Applicants' counsel.

1. This case arises out of an enforcement action that the SEC brought against Pacific West Capital Group, its officers, and its sales agents, including Applicants, for violation of Sections 5(a) and (c) of the Securities Act of 1933, 15 U.S.C. §§ 77e(a), 77e(c), by the unregistered offer and sale of securities, and Section 15(a) of the Securities and Exchange Act of 1934, 15 U.S.C. § 78o(a), by failing to register as broker-dealers. The alleged violations arose out of Applicants' sale of life settlement arrangements—contracts under which holders of life insurance policies sell them to investors for a better value than that offered by the life insurance companies. The

investors take on the payment of the premiums and receive a profit if, based on the insured's lifespan, the policy payoff outweighs the cost of the policy and its premiums.

2. The district court initially denied the SEC's request for a preliminary injunction and its motion for summary judgment, finding that the SEC had not established that life settlement agreements were subject to the federal securities laws. After the case was reassigned to a different district judge, however, the court granted the SEC's renewed summary judgment motion, ruling that life settlement arrangements constituted "investment contracts" under *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946), and thus were subject to the federal securities laws. The court then ordered Applicants to disgorge one-third of the commissions they received from the sales and to pay civil penalties of $15,000 each.

3. A panel of the court of appeals affirmed both the application of the *Howey* test and the order of disgorgement. The court acknowledged a circuit split on how to weigh pre-purchase activities when applying the *Howey* test. Op. 18. Under *Howey*, an investment is subject to federal securities laws only if the profits come "solely from the efforts of the promoter or a third party." 328 U.S. at 299. The circuits are split on the weight that should be given to a promoter's pre-purchase activities in the course of this inquiry. The Ninth Circuit rejected the D.C. Circuit's approach, which discounts the promoter's efforts because those "ha[ve] already been impounded into the promoter's fees or into the purchase price of the investment." *SEC v. Life Partners, Inc.*, 87 F.3d 536, 547 (D.C. Cir. 1996). Instead, the court sided with the Fifth and Eleventh Circuits, which reject the distinction between the promoter's pre-

and post-purchase activities. Op. 18-19 (discussing *Life Partners*, 87 F.3d at 547; *SEC v. Mut. Benefits Corp.*, 408 F.3d 737, 745 (11th Cir. 2005); *In re Living Benefits Asset Mgmt., L.L.C.*, 916 F.3d 528, 540-41 (5th Cir. 2019)). The court of appeals further held that the order of disgorgement was appropriate because loss of the time value of the investors' money was itself a pecuniary harm sufficient to support disgorgement. Op. 36 & n.4. The court identified no other legally protected interest violated by Applicants' actions that would justify imposition of disgorgement.

4. Applicants sought en banc review of the panel's misapplication of *Howey* and the unwarranted imposition of disgorgement. The Ninth Circuit held the en banc petition in abeyance pending this Court's decision in *Sripetch v. SEC*, 146 S. Ct. 1403 (2026). The court of appeals then denied en banc review.

5. Applicants intend to seek this Court's review of the Ninth Circuit's misapplication of *Howey*. As the court of appeals acknowledged, circuit courts are divided on the weight that should be accorded to pre-purchase activities under *Howey*. Taking sides in this split, the Ninth Circuit "agree[d] with the Eleventh and Fifth Circuits," and expressly rejected the D.C. Circuit's approach, which held that such activities "should be heavily discounted." Op. 18-19. This issue is of critical importance to a wide range of industries, including alternative investments and cryptocurrencies, and this case would provide this Court with an opportunity to clarify the *Howey* test and to ensure its uniform application.

6. Applicants' counsel is also evaluating whether to seek certiorari review on an additional question of the proper application of disgorgement under this Court's

recent *Sripetch* decision. In *Sripetch*, this Court held that disgorgement does not require a showing of pecuniary harm. 146 S. Ct. at 1412. The Court emphasized, however, that disgorgement may only be imposed where a defendant has violated a victim's legally protected rights. *Id.* at 1411-13. The Ninth Circuit's adoption of a novel theory that disgorgement may be used to compensate investors for the lost time value of money, Op. 34, even though investors will recover their principal investment and in the absence of any proof that Applicants' non-fraud registration violations caused any losses to investors, is inconsistent with this requirement.

7. The requested extension of time is further warranted in light of other professional and personal obligations of Applicants' counsel. In addition to significant obligations in other matters, Applicants' counsel, Igor V. Timofeyev, had a petition for a writ of certiorari in *Kahoot! AS v. Interstellar, Inc.*, due in this Court on June 24, 2026, and a previously scheduled family vacation in the month of August. His co-counsel Nicolas Morgan had an *amicus curiae* brief in support of a petition for a writ of certiorari in *Custodia Bank, Inc. v. Federal Reserve Board of Governors*, No. 26-62, due in this Court on August 13, 2026, and has an *amicus curiae* brief in *Goldata Computer Services, Inc. v. Department of Banking & Securities*, No. 28 EAP 2026, due in the Supreme Court of Pennsylvania on August 18, 2026. Finally, his co-counsel Joseph E. Graziano has a previously scheduled parental leave from August 22, 2026 to September 27, 2026. The requested extension will enable counsel to devote adequate time to consider the important issues raised in this case, and to prepare a petition that will be helpful to the Court.

For these reasons, Applicants respectfully request an extension of 60 days, to and including November 8, 2026, within which to file a petition for a writ of certiorari.

August 14, 2026

Respectfully submitted,

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