

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

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

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JOSHUA LAPIN,

*Applicant,*

v.

EVERQUOTE INC ; JOHN DOE SENDER ,

*Respondents.*

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**On Application for an Extension of Time to File Petition for a Writ of  
Certiorari to the United States Court of Appeals for the Eighth Circuit**

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Joshua Lapin

*Pro-Se Plaintiff-Appellant and Applicant*

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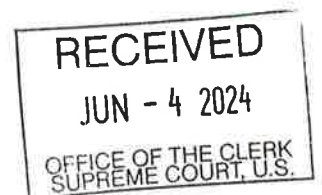
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May 30, 2024



To the Honorable Brett Kavanaugh, as Circuit Justice for the United States Court of Appeals for the Eighth Circuit:

In accordance with this Court's Rules 13.5, 22, 30.2, and 30.3, Applicant Joshua Lapin respectfully requests that the time to file his petition for a writ of certiorari be extended for 60 days, up to and including August 11<sup>th</sup> 2024. The 8<sup>th</sup> Circuit Court of Appeals issued its summary affirmance on March 14<sup>th</sup> 2024 (*Ext. A*) of the opinion of the District of South Dakota (*Ext. B*). Absent an extension of time, the petition would be due on June 12<sup>th</sup> 2024. The jurisdiction of this Court is based on 28 U.S.C. 1254(1). The request is unopposed by Appellee EverQuote Inc ("EverQuote").

### **Background**

This case presents two important questions this court has deemed certworthy several times heretofore.

The first is whether an uninjured plaintiff who receives junk calls/texts/e-mail/voicemail, or similar consumer protection infraction, who seeks only statutory damages, has Art. III standing to sue in the Federal Courts. (Suggested Answer: No). Although this court recently and correctly answered this question in the negative, *twice-over*, in *Spokeo*<sup>1</sup> and *TransUnion*,<sup>2</sup> (the majority opinion of the latter was written by Your Honor), we already see a new post-Transunion Circuit Split on the same: The 11<sup>th</sup><sup>3</sup> and 6<sup>th</sup><sup>4</sup> circuits answer the question in the affirmative, along with the 8<sup>th</sup> Circuit's summary affirmance of the District of South Dakota's judgment, from which application seeks review (*Ext. A*). However, other circuits correctly applied Your Honor's *TransUnion* majority-

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<sup>1</sup>*Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016)

<sup>2</sup>*TransUnion LLC v. Ramirez*, 141 S. Ct. 2190 (2021)

<sup>3</sup>*Drazen v. Pinto*, 74 F.4th 1336 (11th Cir. 2023)

<sup>4</sup>*Dickson v. Direct Energy, LP*, 69 F.4th 338 (6th Cir. 2023)

opinion, and understand “No concrete harm, no standing” Transunion, *supra*, at 2210. The 3<sup>rd</sup> circuit answered this question in the negative<sup>5</sup>, and remarkably, the 8<sup>th</sup><sup>6</sup> has found lack of Article III standing due to lack of traceability in a TCPA case that’s functionally indistinguishable from the instant allegations (n.6) ; in other words, the panel at the 8<sup>th</sup> circuit refused to apply its own precedent to the instant case, and conferred Art. III where it never existed.

The second question is whether a homeless or nomadic US Citizen who lacks a fixed dwelling is a resident of their home state for the purposes of its laws? Phrased Differently: Does a state domiciliary who has a drivers license and voter registration in the state, who swears by affidavit to return to that state at the conclusion of their travels, who never resettled in any other place during such travel, and does indeed return to such state after continuous international travel of approximately two years, constitute a “resident of [this] state” wherein such term is undefined by the statute (Suggested Answer: Yes). Given the rise of so-called “Digital Nomads,” in post-covid America, this question would inevitably come before this court.<sup>7</sup> This court “frequently has considered constitutional challenges to residence requirements” *Martinez v. Bynum*, 461 U.S. 321, 325 (1983). It has invalidated durational residence requirements for voting<sup>8</sup> and for receiving welfare.<sup>9</sup> It has “been careful to distinguish such durational residence requirements from bona fide residence requirements,” *Martinez, supra*, at 325, but it has *never* considered the residency of one who lacks a traditional fixed dwelling of *any* kind in *any* state, much less the relationship between such a nomad and their state of domicile to the extent it seeks to regulate its *residents*.

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<sup>5</sup>*Leyse v. Bank of Am. N.A.*, No. 20-1666 (3d Cir. May 19, 2021)

<sup>6</sup>*St. Louis Heart Ctr., Inc. v. Nomax, Inc.*, 899 F.3d 500 (8th Cir. 2018)

<sup>7</sup><https://www.theguardian.com/money/2023/nov/04/digital-nomads-work-remotely-tech-visas>

<sup>8</sup>*Dunn v. Blumstein*, 405 U.S. 330 (1972)

<sup>9</sup>*Shapiro v. Thompson*, 394 U.S. 618 (1969)

Applicant Joshua Lapin had at all times material a South Dakota driver's license and was a registered voter, self-described "Digital Nomad," who swore to return to South Dakota at the end of his travels, and who traveled constantly for one year and nine months before making good on his sworn promise and returning home to South Dakota. He maintained he was a "resident of this state [South Dakota]" for the purposes of SDCL § 37-24-41(14)(C), throughout the entirety of his travels. Appellee, the District of South Dakota, and 8<sup>th</sup> Circuit, disagree, and hold that Applicant was not a resident of South Dakota in the ordinary sense of the word, and thus does not qualify as a resident under tenants of statutory construction.

Applicant joined thousands of others who obtained South Dakota's residency for full time travelers, as provided for by the state.<sup>10</sup> It was undisputed he fulfilled those requirements, and obtained a South Dakota drivers license, voter registration, and filed the state's DPS's "Residency affidavit," which required him to affirm South Dakota is his "state of residence," that he maintains to residence in any other US State, and that he would return to the state at the conclusion of his travels. In the midst of his worldly travels, Applicant received at least 108 spam e-mails advertising the products and services of EverQuote, all of whom were alleged to have misrepresented headers, in violated of the non-preempted portions of SDCL § 37-24-47. The high statutory damages, divorced from any real&concrete harm and provided for in SDCL § 37-24-48, are available to "residents of this state [South Dakota]" as prescribed in SDCL 37-24-41(14)(C). Appellee prevailed on a 12(b)(6) motion to dismiss, treated as one for summary judgment, on the basis Applicant was not a "resident of this state" as the phrase is construed in its ordinary, plain meaning, notwithstanding the courts admission "South Dakota law may treat Lapin as a South Dakota resident for purposes of allowing Lapin to obtain a South Dakota's Driver's License and to vote." *Lapin v. EverQuote Inc.*, 4:22-CV-04058-KES, at \*26

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<sup>10</sup><https://www.keloland.com/keloland-com-original/spend-one-night-here-and-you-can-be-a-south-dakota-resident/>

(D.S.D. Feb. 17, 2023). The 8<sup>th</sup> Circuit summarily affirmed the lower court, absent almost any commentary on the matter (*Ext. A*), affirming the existence of Art. III standing

The petition for writ of certiorari will be the first time this court has considered the legal status of “digital nomads” a recent, post-covid phenomenon in which people travel from place to place, work remotely from their laptops, and generally lack a fixed dwelling anywhere, notwithstanding their US Citizenship, State Citizenship, and residency for legal purposes; much, if not all, of the personal possessions they own go with them in backpacks or suitcases.

### **Reasons For Granting an Extension of Time**

Without identifying the person and violating their privacy, Applicant warrants and represents had an immediate family member diagnosed with a huge tumor, whose status was then-unknown, on-or-around mid-March 2024. About three days later, the family learned it was benign, but huge, and needed to be removed alongside surrounding organs (Appellant won't be more specific at least outside of a sealed document, to avoid narrowing down who this person may be). Surgery was initially scheduled for mid-May, but was postponed to the following week as their heart was not cleared for surgery the first time, and appellant writes this from the family member's residence, in a state outside of South Dakota, where he continues to care for them post-surgery, and will remain at least until June 7<sup>th</sup> 2024.

Aside from the family emergency, the 27 year old Appellant would benefit from the extension because he is a pro-se “one man band” faced with the extremely difficult task of preparing a certworthy petition, without any law school or other formal legal training. This petition will be paid, and not unpaid. Appellee EverQuote Inc is a large, successful corporation, with local South Dakota counsel, general in-house counsel, and outside counsel, with tremendous legal support and resources. Applicant believes he can defeat

EverQuote and their 8<sup>th</sup> Circuit-Affirmed arguments on constitutional grounds, but admits he needs more time to compile caselaw and format the petition in accordance to the strict requirements of this court; he will also use this time to further his outreach to interest organizations to drum up amicus support for his petition for writ of certiorari: a continuation of applicants efforts to boost his admittedly very-low chances of obtaining cert.

### **Conclusion**

Applicant requests that the time to file a writ of certiorari in the above-captioned matter be extended 60 days to and including August 11<sup>th</sup>, 2024.

Dated 05 / 31 / 2024

Respectfully submitted,



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**Certificate of Service**

A copy of the foregoing application was e-mailed to counsel of record, Steve Morgans and Berkley Fierro of Myers Billion LLP, and further sent by mail on May 31<sup>st</sup> 2024 to them at :

230 S Phillips Ave  
#300, Sioux Falls, SD 57104

Joshua Lapin



05 / 31 / 2024