No. 24A_____

IN THE

Supreme Court of the United States

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
and STATE FARM FIRE AND CASUALTY COMPANY,

Applicants,

v.

FAYSAL A. JAMA, JAMES KELLY, and ANYSA NGETHPHARAT,

Respondents.

**APPLICATION 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**

ALLYSON N. HO
Counsel of Record
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, Texas 75201
(214) 698-3100
AHo@gibsondunn.com

THEODORE J. BOUTROUS JR.
BRADLEY J. HAMBURGER
DANIEL R. ADLER
MATT AIDAN GETZ
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, California 90071

KRISTIN A. LINSLEY
GIBSON, DUNN & CRUTCHER LLP
One Embarcadero Center, Suite 2600
San Francisco, California 94111

PETER W. HERZOG III
WHEELER TRIGG O'DONNELL LLP
211 N. Broadway, Suite 2825
St. Louis, Missouri 63102

ERIC L. ROBERTSON
WHEELER TRIGG O'DONNELL LLP
370 17th Street, Suite 4500
Denver, Colorado 80202

Counsel for Applicants

TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT:

Pursuant to this Court's Rule 13.5, applicants State Farm Mutual Automobile Insurance Company and State Farm Fire and Casualty Company respectfully request a 30-day extension of time, to and including February 25, 2025, 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.[1] The court of appeals entered its judgment on August 19, 2024, App., *infra*, 1a, and denied applicants' timely petition for rehearing on October 28, 2024, *id.* at 38a. Unless extended, the time within which to file a petition for a writ of certiorari will expire on January 26, 2025. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

1. This case presents an important, recurring question of federal class-action law and an acknowledged split among the courts of appeals. All across the country, plaintiffs have sought class certification in many cases challenging the methods used by major car insurers (including State Farm, Progressive, Liberty Mutual, and USAA) to estimate the "actual cash value" of totaled cars. The Fifth Circuit has held that, to obtain class certification, plaintiffs in such cases must be able to prove on a classwide basis not only that the insurer used an unlawful valuation method, but also that each class member received less than the car's actual cash value as a result. *Sampson* v. *USAA*, 83 F.4th 414, 421-23 (5th Cir. 2023); *Bourque* v. *State Farm Mut. Auto. Ins. Co.*, 89 F.4th 525, 528-29 (5th Cir. 2023). In the decision below, the Ninth

[1] Under this Court's Rule 29.6, applicants state that State Farm Fire and Casualty Company is a wholly owned subsidiary of State Farm Mutual Automobile Insurance Company, which has no parent corporation, and that no publicly held corporation owns 10 percent or more of the stock of either applicant.

Circuit openly split from the Fifth Circuit, holding that plaintiffs may maintain a class action by showing only that the insurer used a supposedly unlawful valuation method, regardless of whether the method actually shortchanged each class member. App., *infra*, 14a-23a.

a. When a car insured under one of its policies is totaled, State Farm owes the policyholder the "actual cash value" of the car before it was totaled. App., *infra*, 5a. Actual cash value is equivalent to "'fair market value.'" *Id.* at 11a. Like most insurers, State Farm uses software that draws from dealers' advertised prices on comparable used cars and adjusts the data to estimate the totaled car's pre-accident fair market value. *Id.* at 7a. For instance, because most cars for sale on dealer lots are in better condition—and so are worth more—than the average car on the road, where appropriate the software adjusts for that difference in condition. *Ibid.* And, where appropriate, the software accounts for the negotiation that takes place on most dealer lots, adjusting the advertised price to reflect the amount a willing buyer would actually pay a willing seller. *Ibid.*

b. Respondents are State Farm policyholders whose cars were totaled. They sued State Farm, claiming that Washington's auto-insurance regulations (Wash. Admin. Code ch. 284-30) don't permit insurers to adjust for negotiation, app., *infra*, 7a-8a, and require a sufficient "empirical foundation" for adjustments for condition, *id.* at 8a. Respondents claim that because (in their view) the adjustments State Farm made were illegal, they necessarily suffered an injury and could recover "damages equal to the amount of" the challenged adjustments, whether or not they had already received the actual cash value of their totaled cars. *See id.* at 16a-17a.

c. The district court initially certified a class of policyholders whose claims were resolved using negotiation or condition adjustments. App., *infra*, 8a-9a. But following the decision in *Lara v. First National Insurance Co. of America*, 25 F.4th 1134 (9th Cir. 2022), the district court decertified both classes. It reasoned that "the mere fact of an illegal adjustment under Washington's insurance regulations did not suffice to establish injury." App., *infra*, 12a. And "[b]ecause an insured might ultimately be paid their vehicle's actual cash value or more notwithstanding an unlawful adjustment," the court concluded that respondents "could not prove injury on a class-wide basis" simply by isolating the amount of the illegal adjustment. *Ibid.*

d. In a published opinion, the Ninth Circuit reversed in part. The panel unanimously affirmed the district court's decertification of the class relating to adjustments for condition. App., *infra*, 27a-28a. But it splintered over whether the class relating to adjustments for negotiation was properly certified, with the majority holding that it was. *Ibid.*

i. In the majority's view, the difference between the classes came down to the "putatively unlawful" nature of the two adjustments. App., *infra*, 16a. Respondents' theory was that adjustments for condition are sometimes allowed (though not in the way State Farm performed them) but that "Washington law flatly prohibits *any* negotiation adjustment." *Ibid.* The majority concluded that because negotiation adjustments are "impermissible" under state law, the reasoning in *Lara* did not apply, and any policyholder whose car was valued using such a negotiation adjustment was necessarily injured by the exact amount of that adjustment. *Id.* at 19a.

ii. Judge Rawlinson dissented, objecting that the majority's opinion "creates

an unnecessary circuit split." App., *infra*, 28a. She explained that, even if respondents were correct that Washington law forbids adjustments for negotiation, respondents would "'still have to show harm,'" and that showing would necessarily "'involve looking into the *actual* pre-accident value of the car and then comparing that with what each person was offered'"—questions that would require "'individualized inquiries'" incompatible with class adjudication. *Id.* at 32a-33a. Judge Rawlinson also observed that the majority's decision conflicts with the Fifth Circuit's holdings that, even where policyholders challenge an "illegal" method of valuing totaled cars, they must prove that the method resulted in their receiving less than the cars' fair market value. *Id.* at 33a-35a (citing *Sampson*, 83 F.4th 414, and *Bourque*, 89 F.4th 525).

2. The Ninth Circuit's decision warrants this Court's review. It openly splits with the Fifth Circuit and conflicts with this Court's precedent and the decisions of other courts of appeals.

a. The Fifth and Ninth Circuits are starkly divided on an important, recurring issue that affects hundreds of pending class actions nationwide. In the Fifth Circuit, even where "class members could show that an insurer's use of [a valuation method] was unlawful," they still must "prove an actual underpayment" for each class member, *Sampson*, 83 F.4th at 422-23—proof that cannot "be made on a class-wide basis," *Bourque*, 89 F.4th at 528-29. But in the Ninth Circuit, merely by labeling a valuation method "unlawful," plaintiffs may obtain class certification even without evidence capable of showing that each class member got less than his car's fair market value. App., *infra*, at 16a-23a.

b. The Ninth Circuit's approach also conflicts with this Court's decision in

TransUnion LLC v. *Ramirez*, 594 U.S. 413 (2021). *TransUnion* made clear not only that "[e]very class member must have Article III standing in order to recover individual damages," *id.* at 431, but also that class members can't satisfy that requirement by relying on a pure "injury in law" divorced from proof of an "injury in fact," *id.* at 427. Yet the Ninth Circuit's decision approves precisely that sort of workaround, allowing class members to treat pure regulatory violations as if they were injuries in fact. App., *infra*, at 29a, 32a, 36a (Rawlinson, J., dissenting).

c. The Ninth Circuit's decision further conflicts with the decisions of other courts of appeals. Those courts have held that, even where plaintiffs challenge an insurer's supposedly unlawful claim-valuation methods, they still must prove that each class member was not "fully compensated" as a result—a requirement that demands consideration of "particularized facts" for each class member and that accordingly precludes certification. *Kartman* v. *State Farm Mut. Auto. Ins. Co.*, 634 F.3d 883, 889-90 (7th Cir. 2011); *accord, e.g.*, *Halvorson v. Auto-Owners Ins. Co.*, 718 F.3d 773, 779-80 (8th Cir. 2013); *see also Lewis* v. *GEICO*, 98 F.4th 452, 461 (3d Cir. 2024) (dismissing total-loss claim for lack of standing because a "bare violation of [state] insurance rules" was not enough to prove an injury in fact).

3. Additional time is necessary for counsel to prepare a petition that would be helpful to the Court. Counsel for applicants have had, and will continue to have, significant professional responsibilities in other time-sensitive matters, along with preexisting travel plans, before and after the current January 26 deadline.

Accordingly, applicants respectfully request that their time to file a petition for a writ of certiorari be extended by 30 days, to and including February 25, 2025.

Respectfully submitted.

/s/ Allyson N. Ho

ALLYSON N. HO
Counsel of Record
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, Texas 75201
(214) 698-3100
AHo@gibsondunn.com

KRISTIN A. LINSLEY
GIBSON, DUNN & CRUTCHER LLP
One Embarcadero Center, Suite 2600
San Francisco, California 94111

THEODORE J. BOUTROUS JR.
BRADLEY J. HAMBURGER
DANIEL R. ADLER
MATT AIDAN GETZ
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, California 90071

PETER W. HERZOG III
WHEELER TRIGG O'DONNELL LLP
211 N. Broadway, Suite 2825
St. Louis, Missouri 63102

ERIC L. ROBERTSON
WHEELER TRIGG O'DONNELL LLP
370 17th Street, Suite 4500
Denver, Colorado 80202

Counsel for Applicants State Farm Mutual Automobile Insurance Company and State Farm Fire and Casualty Company

January 10, 2024