No._____

IN THE

Supreme Court of the United States

PREMIER NUTRITION CORPORATION,

Applicant,

— v. —

MARY BETH MONTERA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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UNOPPOSED APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Applicant Premier Nutrition Corporation, now known as Premier Nutrition Company, LLC, states that it is wholly owned by Dymatize Enterprises, LLC, which is wholly owned by TA/DEI-A Acquisition Corp., which is wholly owned by BellRing Brands, LLC, which is wholly owned by BellRing Intermediate Holdings, Inc., which is wholly owned by BellRing Brands, Inc., which is publicly held. No publicly held corporation owns 10% or more of BellRing Brands, Inc.'s stock.

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

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), Applicant Premier Nutrition Corporation ("Premier") respectfully requests a 60-day extension of time, up to and including March 17, 2025, in which to file a petition for a writ of certiorari. In support of this request, counsel states as follows:

1. On August 6, 2024, a panel of the United States Court of Appeals for the Ninth Circuit affirmed the judgment of the United States District Court for the Northern District of California. *See* App. 1a-40a; *Montera v. Premier Nutrition Corp.*, 111 F.4th 1018 (9th Cir. 2024). Premier filed a petition for rehearing en banc, which the Ninth Circuit denied on October 18, 2024. *See* App 41a.
2. Premier has ninety days from October 18, 2024, to petition for a writ of certiorari. *See* Sup. Ct. R. 13.1. The petition is therefore due on January 16, 2025. This application is timely because it is being filed at least ten days before that date. *See* Sup. Ct. R. 13.5.
3. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).
4. There is good cause for this application. This appeal raises an exceptional and recurring question arising at the intersection of state-law certification, judicial federalism, and this Court's decision in *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393 (2010).
    a. This Court has long encouraged federal courts to certify unsettled

questions of state law to state supreme courts as a way to "save time, energy, and resources" and to "help[] build a cooperative judicial federalism." *Lehman Brothers v. Schein*, 416 U.S. 386, 390-91 (1974); *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 79 (1997); *McKesson v. Doe*, 592 U.S. 1, 5-6 (2020). And indeed, certification is especially important when it comes to state-law questions that become locked in a federal forum. For, without certification, "[t]he risk . . . is that the interpretation of state law will exist without any participation by the state courts." Hon. Kenneth F. Ripple & Kari Anne Gallagher, *Certification Comes of Age: Reflections on the Past, Present, and Future of Cooperative Judicial Federalism*, 95 Notre Dame L. Rev. 1927, 1941 (2020). In such circumstances, certification is necessary to "ensure[] that the law [federal courts] apply is genuinely *state* law." *Todd v. Societe BIC, S.A.*, 9 F.3d 1216, 1222 (7th Cir. 1993) (Easterbrook, J.).

b. One such set of state-law claims that is heard almost exclusively in federal court are class-action claims brought under the laws of states that limit plaintiffs' ability to bring those claims as class actions.[1] Why? Because *Shady Grove* holds that a plaintiff can evade state

[1] *See, e.g.*, N.Y. C.P.L.R. § 901(b) (barring class actions that seek statutory damages); Fla. Stat. § 768.734 (same); Utah Code § 13-11-19(2) (same); Ala. Code § 8-19-10(f) (barring private class actions under certain state consumer-protection laws); Ga. Stat. § 10-1-399(a) (same); Mont. Code § 30-14-133(1) (same); S.C. Code § 39-5-140(a) (same); Tenn. Stat. § 47-18-109(a)(1) (same); La. Revised Stat. § 51:1409(A) (same); Ark. Code § 4-88-104 (same); Ill. Comp. Stat § 10/7(2) (same).

limits on class actions simply by filing the class action in federal court—on the logic that such state limits are "procedural" and "conflict with" Federal Civil Rule 23. *See* 559 U.S. at 398-416 (opinion of Scalia, J.,); *id.* at 417-36 (opinion of Stevens, J.). As a result of *Shady Grove*, plaintiffs file certain state-law class claims almost *exclusively* in federal court. And federal courts, in turn, are increasingly deciding critical questions of state law related to these claims *without any input* from state courts.[2]

c. This is one such case. Plaintiff Mary Beth Montera filed a class action under *New York state* law in *California federal* court. Ms. Montera alleged that Premier's labeling on its "Joint Juice" dietary-supplement products was misleading and sought to collect up to $500 in statutory damages for each unit of Joint Juice sold in New York. App. 5a-8a. Although this kind of class action is not permitted under New York

[2] *See, e.g.*, *Lisk v. Lumber Wood Preserving, LLC*, 792 F.3d 1331, 1334-37 (11th Cir. 2015) (allowing Alabama consumer-protection case to proceed in federal court as a class action, contrary to state law, and then proceeding to consider substantive questions of Alabama law); *Speerly v. General Motors, LLC*, 115 F.4th 680, 710-11 (6th Cir. 2024), *vacated for r'hrg en banc*, 2024 WL 5162574 (6th Cir. Dec. 19, 2024) (same, for claims brought under Louisiana, Arkansas, and Tennessee law); *Morris v. Lincare, Inc.*, 2024 WL 2702101, at *4-5 (M.D. Fla. May 24, 2024) (same, for claims brought under Florida law); *In re Pork Antitrust Litig.*, 495 F. Supp. 3d 753, 776-78, 790 (D. Minn. 2020) (same, for claims brought under Illinois, South Carolina, Utah, and Arkansas law); *Wilson v. Volkswagen Grp. of Am., Inc.*, 2018 WL 4623539, at *14 (S.D. Fla. Sept. 26, 2018) (same, for claims brought under Utah law); *Ace Tree Surgery, Inc. v. Terex Corp.*, 2018 WL 11350262, at *13-16 (N.D. Ga. Dec. 10, 2018) (same, for claims brought under Connecticut and Georgia law); *Wittman v. CB1, Inc.*, 2016 WL 1411348, at *8 (D. Mont. Apr. 8, 2016) (same, for claims brought under Montana law); *Suchanek v. Sturm Foods, Inc.*, 311 F.R.D. 239, 262-64 (N.D. Ill. 2015) (same, for claims brought under South Carolina and Tennessee law).

state law, *see* N.Y. C.P.L.R. § 901(b), *Shady Grove* allows Ms. Montera to pursue her case in federal court. App. 30a. The district court certified a class of New York purchasers, and the case proceeded to a jury trial. At trial, the jury found Premier liable under New York law and awarded the class $1.5 million in actual damages. App. 7a. After trial, Plaintiff sought an order from the district court increasing the class's damages to *$91 million* in statutory damages. App. 8a. The district court granted the request in part and awarded the class $8.3 million in statutory damages. *Id.* Critically, though, the certification order, jury instructions, and damages order all rested on unsettled interpretations of New York state law. App. 43a-53a.

d. Premier appealed to the Ninth Circuit and also moved to certify four controlling questions of New York state law to the New York Court of Appeals. App. 43a-53a. Despite acknowledging that the questions of New York law Premier raised were indeed unsettled,[3] the Ninth Circuit elected to decide those questions for itself, declining to certify them in a terse, unreasoned footnote that relied only on a bare assertion of "discretion" as justification for the denial of Premier's request. App. 39a. The Ninth Circuit proceeded to affirm the

[3] *See, e.g.*, App. 32a ("We know of no New York caselaw that resolves this question. . . ."); App. 30a-31a ("there is limited precedent from New York courts on some questions presented by this appeal related to the calculation of damages"); App. 31a (observing that the district court "[l]ack[ed] guidance from New York courts"); App. 13a (faulting Premier for its "failure to support its interpretation of New York law" with more than a single New York federal-court decision).

judgment in substantial part. App. 9a-39a.

e. Certiorari is necessary because the Ninth Circuit's cursory refusal to grant certification violated the letter and spirit of this Court's existing certification jurisprudence, and because this case is an ideal vehicle for addressing how federal courts should handle certification requests in "*Shady Grove* class actions" going forward. The question is critically important not just to New York, but to all the other states whose courts plaintiffs have sought to avoid after *Shady Grove*. This Court should step in to reinforce the "judicial federalism" interests underlying its certification jurisprudence, *Lehman Brothers*, 416 U.S. at 390-91, and to clarify the ongoing confusion in the federal circuits over these issues. *See, e.g.*, *Lindenberg v. Jackson Nat'l Life Ins. Co.*, 919 F.3d 992, 997, 1001-02 (6th Cir. 2019) (Bush, J., dissenting from denial of rehearing en banc) (noting that this Court's "lack of direction" has "create[d] the potential for intra-circuit conflict as to when certification is appropriate" and "welcom[ing]" "further guidance" from this Court).

5. Good cause also exists because Premier's counsel had and has a number of argument and briefing deadlines during and after the initial deadline for filing a certiorari petition, including: (1) an answering brief in *Enciso v. Jackson National Life Ins. Co.*, No. 24-1334 (9th Cir.), filed December 16, 2024; (2) an opening brief in *In re City of Chester, Pennsylvania*, No. 24-3133

(3d Cir.), filed December 30, 2024; (3) a response brief regarding the award of statutory damages in *Montera v. Premier Nutrition Corp.*, No. 3:16-cv-06980-RS (N.D. Calif.), to be filed January 6, 2025; (4) a supplemental brief in *Farley v. Lincoln Benefit Life Co.*, No. 23-16224 (9th Cir.), to be filed on January 6, 2025; (5) a response brief in *Bland v. Premier Nutrition Corp.*, No. RG19002714 (Cal. Super. Ct.) to be filed January 10, 2025; (6) a response brief in *United States ex rel. Moore v. Regeneron Pharmaceuticals, Inc.*, et al., No. 24-5569 (9th Cir.), to be filed January 22, 2025; and (7) oral argument in *Oakland Family Restaurants, et al. v. American Dairy Queen Corp.*, No. 24-1331 (6th Cir.), to be held January 28, 2025.

6. Premier contacted Respondent for their position on this application, and Respondent stated that they do not oppose the request.

For these reasons, Premier respectfully requests that an order be entered extending the time in which to petition for a writ of certiorari by 60 days, up to and including March 17, 2025.

Dated: January 3, 2025

Respectfully submitted,

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