

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

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

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JOHN ABDELSAYED and  
TRENDS REALTY USA CORP.,  
*Applicants,*

v.

AFFORDABLE AERIAL PHOTOGRAPHY, INC.  
*Respondent.*

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

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 29.6, the undersigned counsel certifies that applicant Trends Realty USA Corp. does not have a parent corporation and no publicly held company owns 10% or more of its stock.

/s/ Griffin Klema  
Griffin C. Klema, Esq.

## APPLICATION

To the Honorable Clarence Thomas, Associate Justice of the United States Supreme Court and Circuit Justice for the United States Court of Appeals for the Eleventh Circuit:

1. Pursuant to Supreme Court Rule 13.5, Applicants respectfully request a 60-day extension of time, to and including October 7, 2024, within which to file a petition for a writ of certiorari. The United States Court of Appeals for the Eleventh Circuit issued an opinion on February 28, 2024, affirming the District Court's denial of the defendants' attorney's fees on basis not argued in the trial court. A copy of that opinion is attached as Exhibit A (cited herein as "Op." with page number). The Eleventh Circuit then denied Applicants' timely petition for a rehearing en banc in an order issued on May 8, 2024. A copy of that order is attached as Exhibit B. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1). Absent an extension, a petition for a writ of certiorari would be due on August 6, 2024. This application is being filed more than ten days in advance of that date, and no prior application has been made in this case.

2. John Abdelsayed and his real estate company were forced to defend a lawsuit claiming copyright infringement and copyright infringement management information ("CMI") removal, when they could not pay the large

sum of money demanded by plaintiff Affordable Aerial Photography. In defending themselves, they sought the protections afforded by Rule 68 and offered judgment to Affordable Aerial Photography, but one it did not accept. Op.2. More than a year of defensive effort Abdelsayed proved that Affordable Aerial Photography's case was baseless, including a direct admission of frivolousness on its CMI removal claim, and which caused Affordable Aerial Photography to request a voluntary dismissal under Rule 41(a)(2)—by which it sought to avoid exposure for Abdelsayed's attorney's fees. Given the effort expended in defending against Affordable Aerial Photography's claims, Abdelsayed opposed the dismissal, arguing that those claims should be decided on their merits and that if dismissed, they, as the defendants, should be awarded their attorney's fees. Op.2.

3. The District Court granted Affordable Aerial Photography the judgment of dismissal without prejudice exactly as it sought, awarded Abdelsayed his court costs, ended the case on the merits, and thereby placed Abdelsayed and Trends Realty into the same position they held before being forced to defend against those claims. Op.2.

4. Abdelsayed then moved, post-judgment, for attorney's fees, arguing that Affordable Aerial Photography had obtained a judgment less favorable than Abdelsayed's Rule 68 offer, and that Abdelsayed was a prevailing party under

the Copyright Act for having rebuffed all of Affordable Aerial Photography's claims. Op.2-3. As a practical matter, he argued the judgment which conditioned refiling on the payment of attorney's fees meant that Affordable Aerial Photography would never do so because the asserted basis for dismissal was that its case was no longer worth the continued effort.

5. The District Court denied Abdelsayed's application for fees, concluding that it was an improper motion for reconsideration of the court's discretionary decision to grant Affordable Aerial Photography the Rule 41(a) dismissal it requested. Op.3. In doing so, it never reached the merits of Abdelsayed's argument that he should be awarded attorney's fees as a post-judgment prevailing party under §§ 505 and 1203(b)(5) of the Copyright Act pursuant to *Kirtsaeng v. John Wiley & Sons, Inc.*, 579 U.S. 197 (2016) and *CRST Van Expedited, Inc. v. EEOC*, 578 U.S. 419 (2016), or for Affordable Aerial Photography's rejection of his Rule 68 offer of judgment, pursuant to *Jordan v. Time Inc.*, 111 F.3d 102 (11th Cir. 1997).<sup>1</sup>

6. Abdelsayed then appealed that final order to the Eleventh Circuit, arguing that the district court had erred procedurally and substantively; that he was a prevailing party and should be awarded fees under the Copyright Act, as

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<sup>1</sup> Under Eleventh Circuit precedent, costs under Rule 68 in copyright actions include attorney's fees.

well as entitled to fees for Affordable Aerial Photography's obtaining a judgment that was less favorable than his Rule 68 offer. Op.3. The Eleventh Circuit affirmed the denial of fees, but on grounds different from those given by the District Court. Op.3.

7. Despite securing the same status he held *ex ante* by court order, the Eleventh Circuit concluded that Abdelsayed had not rebuffed Affordable Aerial Photography's claims because, in granting a judgment of dismissal under Rule 41(a)(2), the District Court had not placed any imprimatur on the legal relationship of the parties. It cited its prior decision in *United States v. \$70,670 in U.S. Currency*, 929 F.3d 1293 (11th Cir. 2019) for that proposition, and concluded that a voluntary dismissal without prejudice "renders the proceedings a nullity" even though it recognized that such a decision "leaves the parties as if the action had never been brought." Op. 8.

8. On the Rule 68 issue, the panel concluded that, because the judgment did not "favor" plaintiff Affordable Aerial Photography, Rule 68 was inapplicable. Op. 5-6. It cited *Delta Air Lines, Inc v. August*, 450 U.S. 346 (1981), and focused on the judgment's favorability as between the parties. It did not analyze the language of Rule 68 or analyze whether Affordable Aerial Photography had "obtained" the judgment it requested. Op. 5-6.

9. The Eleventh Circuit thus concluded that (A) Rule 68 does not

apply because Affordable Aerial Photography “did not obtain a judgment in its favor,” Op.5, while simultaneously that (B) Abdelsayed was not a prevailing party because he “had not obtained a final judgment rejecting [plaintiff’s] claims,” Op.9 (quoting \$70,760).

10. Arguing that the opinion’s rationale was inconsistent and conflicted with the mode of analysis for prevailing defendants articulated in *CRST Van Expedited*, Abdelsayed petitioned for rehearing en banc, which the Eleventh Circuit denied.

11. This case presents an important question of broad applicability left unanswered in *CRST Van Expedited*, namely whether a preclusive judgment is necessary for a defendant to be considered prevailing—and more particularly whether a court-ordered voluntary dismissal without prejudice that reestablishes the *status quo ante* does so. It also presents the complementary question of whether a plaintiff’s request for a judgment of voluntary dismissal without prejudice is one that a plaintiff “obtains” for purposes of Rule 68.

12. John Abdelsayed and Trends Realty USA Corp respectfully request a 60-day extension of time to file a petition for a writ of certiorari seeking review of the Eleventh Circuit’s ruling and submit that there is good cause for granting the request. The decision of the Eleventh Circuit affirming the denial of attorney’s fees rested on reasons not considered by the District Court or argued

