

**No. 18-**

**IN THE SUPREME COURT OF THE UNITED STATES**

---

PHILIP BOBBITT, individually and on behalf of all others similarly situated; et al.,

and

LANCE LABER,  
Applicant,  
v.

MILBERG LLP; et al.,  
Respondents.

---

**APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR  
A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT**

---

To the Honorable Anthony M. Kennedy, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit.

Pursuant to this Court's Rule 13.5, Lance Laber respectfully requests a 45-day extension of time, to and including August 6, 2018, to file a petition for writ of certiorari in this case. The Ninth Circuit entered judgment on February 1, 2018, and denied Laber's timely petition for panel rehearing and rehearing en banc on March 22, 2018. *See* App. A-B. The time to file a petition for a writ of certiorari currently expires on June 20, 2018. This Court's jurisdiction would be invoked pursuant to 28 U.S.C. § 1254(1).

1. Philip Bobbitt and John Sampson sued Milberg LLP and various other lawyers and law firms (“Milberg”) for legal malpractice in an underlying class action suit. Following the district court’s denial of Bobbitt and Sampson’s motion for class certification in their suit against Milberg, Bobbitt and Sampson moved for voluntary dismissal of their individual claims with prejudice, and Laber, an unnamed member of the putative class, intervened for purposes of appealing the denial of class certification.

2. Concluding that it had jurisdiction to hear Laber’s appeal, the Ninth Circuit reversed the district court’s denial of class certification. *Bobbitt v. Milberg LLP*, 801 F.3d 1066 (9th Cir. 2015).

3. This Court granted Milberg’s petition for a writ of certiorari, vacated the Ninth Circuit’s judgment, and remanded to that court for further consideration in light of *Microsoft Corp. v. Baker*, 137 S. Ct. 1702 (2017), which held that a named plaintiff who voluntarily dismisses his own claims with prejudice cannot himself then appeal that dismissal as a final order under 28 U.S.C. § 1291.

4. On remand, the Ninth Circuit dismissed Laber’s appeal, concluding it lacked jurisdiction under *Baker*.

5. Laber respectfully requests a 45-day extension of time in which to file a petition for a writ of certiorari in this case. One of Laber’s appellate counsel was in trial for most of the month of May, and appellate counsel need additional time to

prepare and file Laber's petition for certiorari in light of multiple pending briefing deadlines in other matters over June and July. Additionally, the last conference for the October 2017 Term is June 21, 2018, and, given that the time to file a petition for a writ of certiorari currently expires on June 20, 2018, the Court likely would not consider the petition until the October 2018 Term in any event.

For the foregoing reasons, Laber respectfully requests that the time for filing a petition for a writ of certiorari in this case be extended to and including August 6, 2018.

Respectfully submitted.



LAWRENCE A. KASTEN  
*Counsel of Record*  
ROBERT H. MCKIRGAN  
DANIEL A. ARELLANO  
LEWIS ROCA ROTHGERBER CHRISTIE LLP  
201 East Washington Street, Suite 1200  
Phoenix, Arizona 85004

GUY M. HOHMANN  
RYAN T. SHELTON  
HOHMANN, BROPHY, SHELTON & WEISS,  
PLLC  
210 Barton Springs Road, Suite 500  
Austin, Texas 78704

R. JAMES GEORGE, JR.  
GARY L. LEWIS  
GEORGE, BROTHERS, KINCAID & HORTON  
LLP  
114 West 7th Street, Suite 1100  
Austin, Texas 78701

June 7, 2018