No. 22A-_____

IN THE

SUPREME COURT OF THE UNITED STATES

JENNA DICKENSON,

Applicant,

v.

CHARLES T. JOHNSON, NPAS SOLUTIONS, LLC,

Respondents.

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

TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT:

Pursuant to this Court's Rules 13.5, 22, 30.2, and 30.3, Jenna Dickenson, respectfully requests an extension of time from November 1, 2022, to and including December 29, 2022, to file a petition for a writ of certiorari to review the decision of the United States Court of Appeals for the Eleventh Circuit in *Johnson v. NPAS Solutions, LLC,* No. 18-12344-JJ (11th Cir. Sept. 17, 2020), a matter in which rehearing was

denied on August 3, 2022). The Eleventh Circuit's opinion is reported as *Johnson v. NPAS Solutions, LLC,* 975 F.3d 1244 (11th Cir. Sept. 17, 2020). The Court's order denying rehearing is reported as *Johnson v. NPAS Sols., LLC,* 43 F.4th 1138 (11th Cir. Aug. 3, 2022).

The case was filed as a consumer class action seeking statutory damages under the Telephone Consumer Protection Act (TCPA) in the United States District Court for the Southern District of Florida, which approved a proposed settlement, awarding attorney's fees to the class-action plaintiffs' counsel, and an "incentive award" or "service award" to the named plaintiff, Charles T. Johnson. Applicant Jenna Dickenson is a class member who appeared through counsel before the Southern District of Florida as an objector challenging both the settlement and the award of attorney's fees and payment of the service award, and who then timely appealed to the United States Court of Appeals for the Eleventh Circuit. The Eleventh Circuit entered its decision on September 17, 2020, included in the Appendix hereto, reversing approval of the class-action settlement, attorney's fee award, and incentive awards. *See* Appendix. As noted above, its opinion is reported

as *Johnson v. NPAS Solutions, LLC,* 975 F.3d 1244 (11th Cir. Sept. 17, 2020).

The Eleventh Circuit granted an extension of time to file rehearing petitions, and on October 22, 2020, Dickenson filed a timely petition for rehearing. The Eleventh Circuit entered an order denying rehearing on August 3, 2022, which is included in the Appendix hereto, and is reported as *Johnson v. NPAS Solutions, LLC,* 43 F.4th 1138 (11th Cir. Aug. 3, 2022).

A petition for certiorari would be timely under this Court's rules if filed within ninety days from August 3, 2022, denial of rehearing. November 1, 2022. *See* Rules 13.1, 13.3. Thus, without an extension, the petition would be timely filed by November 1, 2022. This application is being filed ten days before that date. *See* Sup. Ct. R. 13.5.

The extension that Dickenson seeks, to Friday December 29, 2022, amounts an extension of 58 days from the current November 1, 2022, due date.

This Court has jurisdiction under 28 U.S.C. §1254(1) to review the decision of the United States Court of Appeals for the Eleventh Circuit in this case.

Reasons for Granting an Extension of Time

Based on the following factors, good cause exists to extend the time to file a petition for a writ of certiorari:

1. Applicant's counsel Eric Alan Isaacson, who is preparing the petition for a writ of certiorari in this matter, is a solo practitioner.

2. Mr. Isaacson's responsibilities for several other pending matters have made it impossible for him to complete a petition for a writ of certiorari to be filed in this matter by November 1, 2022.

3. Mr. Isaacson presently is preparing to appear at a final-approval hearing before the United States District Court for the Northern District of California on October 27, 2022, in *In re Facebook Internet Tracking Litigation,* No. 5:12-MD-2314-EJD.

4. Mr. Isaacson's responsibilities as primary appellate counsel in *Chieftain Royalty Co. v. Enervest Energy Institutional Fund XII-A LP (Appeal of Charles David Nutley),* Nos. 22-6124, 22-6125, a complex appeal pending before the United States Court of Appeals for the Tenth Circuit, require him to prepare and file an appellate opening brief in that court by November 2, 2022.

5. Mr. Isaacson's responsibilities as primary appellate counsel in *Miorelli v. Costa del Mar,* Nos. 22-10663-E, 22-10666, 20-10667, a complex appeal pending before the Eleventh Circuit obligate him to file a reply brief in that court by November 4, 2022.

6. In addition, Mr. Isaacson is engaged in graduate studies through the Harvard Extension School, and has a midterm examination due October 27, 2022, in one of his courses.

7. As a consequence of Mr. Isaacson's responsibilities in the foregoing matters, he cannot complete an adequate petition for a writ of certiorari in this case by the current due date of November 1, 2022.

8. Thereafter, Mr. Isaacson will be traveling and spending much of November in Massachusetts in connection with Harvard Extension School courses.

9. During that period, he also must prepare for a December 7, 2022, oral argument before the United States Court of Appeals for the Second Circuit in *Moses v. The New York Times, Co.,* No. 21-2556.

10. This case presents an issue of national importance concerning calculation of reasonable attorney's fees in connection with class-action settlements. *See Johnson v. NPAS Solutions,* slip op. at 31 n.14.

11. Applicant's counsel believes the Eleventh Circuit's precedents on attorney's fees conflict both with this Court's decision in *Trustees v. Greenough*, 105 U.S. 527 (1882), concerning common-fund fee awards, and with this court's decision in *Perdue v. Kenny A. ex rel. Winn,* 559 U.S. 542 (2010), concerning "reasonable" attorney's fees awarded in contingent-fee class-action litigation.

12. In addition, the circuit courts are in conflict concerning fee awards in common-fund cases, with the Eleventh Circuit and District of Columbia Circuit requiring such fees to be awarded as a percentage of the common fund, while other circuits hold that district courts have discretion to award fees based on the attorneys' lodestars. *Compare Camden I Condominium Ass'n v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991), and *Swedish Hospital Corp. v. Shalala,* 1 F.3d 1261, 1265-71 (D.C. Cir. 1993), *with Goldberger v. Integrated Resources, Inc.,* 209 F.3d 43, 50 (2d Cir. 2000); *Rawlings v. Prudential-Bache Properties, Inc.,* 9 F.3d 513, 515-16 (6th Cir. 1993); *Florin v. Nationsbank of Georgia,* NA, 34 F.3d 560, 565-66 (7th Cir. 1994); *In re WPPSS Litig.,* 19 F.3d 1291, 1295 (9th Cir. 1994); *Gottlieb v. Barry,* 43 F.3d 474, 483 (10th Cir. 1994).

13. The Eleventh Circuit with *Camden I,* moreover, established a 25% "benchmark" for percent-of-fund fee awards in common-fund cases. *See, e.g., Faught v. Am. Home Shield Corp.,* 668 F.3d 1233, 1242 (11th Cir. 2011); *Camden I Condominium Ass'n v. Dunkle*, 946 F.2d 768, 775 (11th Cir. 1991). The Ninth Circuit also had imposed a 25% "benchmark" for common-fund attorney's fee awards. *See, e.g., Fritsch v. Swift Transp. Co.,* 899 F.3d 785, 796 (9th Cir. 2018); *Stanger v. China Electric Motor, Inc*., 812 F.3d 734, 738 (9th Cir. 2016)("The Ninth Circuit has set 25% of the fund as a 'benchmark' award under the percentage-of-fund method."); *In re Bluetooth Headset Prod. Liab. Litig.,* 654 F.3d 935, 942 (9th Cir. 2011)(citing "25% of the fund as the 'benchmark' for a reasonable fee award" and requiring an "adequate explanation in the record of any 'special circumstances' justifying a departure" from the benchmark); *In re Coordinated Pretrial Proceedings,* 109 F. 3d 602, 607 (9th Cir. 1997)("'the district court should take note that 25 percent has been a proper benchmark figure.'"). Declaring itself "disturbed by the essential notion of a bench-mark" the Second Circuit, on the other hand, has flatly rejected the 25% benchmark as "an all too tempting substitute for the searching

assessment that should properly be performed in each case." *Goldberger v. Integrated Resources, Inc.,* 209 F.3d 43, 52 (2d Cir. 2000). "Starting an analysis with a benchmark could easily lead to routine windfalls." *Id*. The 25% "benchmark" appears to be inconsistent, moreover, with this Court's common-fund precedents. *See, e.g. Central R. & Banking Co. v. Pettus,* 113 U.S. 116, 128 (1885)(slashing common-fund fee award from an unreasonably high 10% of the fund to just 5%); *Harrison v. Perea,* 168 U.S. 311, 325 (1897)(affirming award of a fee amounting to 10% of the fund); *United States v. Equitable Trust Co.,* 283 U.S. 738, 746 (1931)(holding "the allowance [for attorneys' fees] of $100,000 unreasonably high and that to bring it within the standard of reasonableness it should be reduced to $50,000," which was roughly 7½% of the fund in question).

CONCLUSION

In light of the applicant's counsel's status as a solo practitioner and obligations in other matters, preparing an adequate petition for a writ of certiorari will require an extension of time, affording good cause to extend the time for Jenna Dickenson to file a petition for a writ of certiorari to and including December 29, 2022.

DATED: October 21,2022

Respectfully submitted,

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