

CASE NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

SCOTT SMITH, an individual, DBA ENTREPRENEURPR,

Petitioner,

v.

ENTREPRENEUR MEDIA, INC., a California corporation,

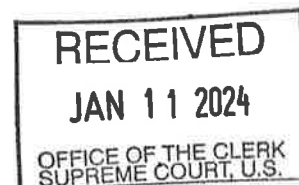
Respondent,

On Application for an Extension of Time
to File Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

**PETITIONER'S APPLICATION TO EXTEND TIME
TO FILE PETITION FOR WRIT OF CERTIORARI**

SCOTT SMITH
5716 Folsom Blvd, Suite 140
Sacramento, CA 95819
(916) 453-8611
scott@bizstarz.com

Petitioner (Pro Se)



To the Honorable Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Pursuant to this Court’s Rules 13.5, 22, 30.2, and 30.3, Petitioner and Applicant SCOTT SMITH (“Smith”) respectfully requests that the time to file his Petition for Writ of Certiorari in this matter be extended for 60 days up to and including March 18, 2024. The Ninth Circuit issued its order and opinion on October 20, 2023. (Appendix (“App.”) A) in *Entrepreneur Media, Inc., a California Corporation, v. Scott Smith, an individual, DBA EntrepreneurPR*, United States Court of Appeals for the Ninth Circuit, Case Number No. 22-55459. Absent an extension of time, the Petition for Writ of Certiorari would be due on January 18, 2024. Smith is timely filing this Application at least ten days before that date. See S. Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C. 1254(1).

Counsel for Respondent Entrepreneur Media, Inc. (“Respondent”), Caitlyn M. Hobbs of Burger | Meyer, LLP, has informed Smith in writing that Respondent does stipulate to Smith’s application to extend time to file his petition for writ of certiorari.

Background

This matter stems from trademark infringement litigation brought by Respondent against Smith over a quarter century ago in 1998. Respondent

is a magazine publisher, their primary publication is *Entrepreneur* magazine, and it claims to own all trademark rights for all goods and services, to the word “Entrepreneur.” Smith is a life-long “entrepreneur,” public relations consultant, and small business advocate. Respondent sued Smith in 1998 over his use of the word “Entrepreneur” in the name of his public relations firm for entrepreneurs (“EntrepreneurPR”), his PR firm’s website address (“EntrepreneurPR.com”), and his PR firm’s booklet of his clients’ press releases (“Entrepreneur Illustrated”).

Respondent’s trademark lawsuits against Smith and other entrepreneurs and small businesses over the generic and widely used word “entrepreneur,” have earned Respondent a reputation for being a “trademark bully” and have also generated numerous headlines around the world. For example, Bloomberg’s *Businessweek* magazine wrote, in part:

“*Entrepreneur*, the Magazine That Sues Entrepreneurs...the periodical’s founder and former owner, Chase Revel, once tried robbing banks for a living....Since the early 1980s, EMI has sued or threatened to sue (100s) of businesses and organizations it claims infringed its trademarks....Unlike EMI, most companies don’t make a practice of suing the very people they hope to attract.”¹
(Paul M. Barrett, Assistant Managing Editor, Bloomberg Businessweek, May 19, 2011; emphasis in original)

¹ See also Stanford Law School: Entrepreneur, the Magazine That Sues Entrepreneurs - Media Coverage - Stanford Law School; <https://law.stanford.edu/press/entrepreneur-the-magazine-that-sues-entrepreneurs/>

Judgment was entered in this matter on July 10, 2003 in favor of Respondent in the amount of \$1,685,260.44.

The district court entered an order granting Respondent's motion for attorneys' fees and related costs on August 13, 2003. Respondent previously renewed the judgment on February 1, 2012. Respondent subsequently applied to the district court to renew the judgment on January 20, 2022. The clerk of the district court entered notice of the renewal on January 25, 2022. Respondent has acknowledged that the judgment is uncollectable, has engaged in minimal judgment enforcement, and courts have determined that Respondent is instead using the judgment to "hammer against Mr. Smith."

Respondent's 2022 application for a renewed judgment unlawfully and grossly inflated the amount of the renewed judgment by over \$1,600,000.00. Like its 2012 request to renew the judgment, Respondent's 2022 request also violated the district court's *required* Local Rule 5.4.3.1. Incredibly, the district court has allowed Respondent to repeatedly and persistently violate its required Local Rule 5.4.3.1 for over a decade, and for in excess of 100 times. This despite the fact that *In United States v. HVASS*, 355 U.S. 570, 578 (1958), the United States Supreme Court held that a local rule of a District Court is "law of the United States" and therefore must be followed.

And “District judges must adhere to their court’s local rules, which have the force of federal law.” *In re Corrinet*, 645 F.3d 1141, 1146 (9th Cir. 2011).

Smith timely opposed Respondent’s defective and improper 2022 application for a renewed judgment, and moved to vacate the judgment primarily based on State of California law citing misconduct and fraud, and additionally moved to have the district court void Respondent’s trademark, “Entrepreneur” due to fraud and other misconduct related to the underlying district court litigation. For example, Smith has discovered that Respondent’s primary “Entrepreneur” trademark was fraudulently obtained by its founder, John Leonard Burke, using the false and non-legal name of “Chase Revel” to hide his extensive criminal history, including being a convicted bank robber: **“Entrepreneur Magazine’s Revel Arrested : Ex-Bank Robber Held on Handgun, Perjury, Forgery Charges,”** *Los Angeles Times*, August 8, 1986 (emphasis in original).²

The district court denied Smith’s motion to vacate, but granted in part as to Respondent’s erroneous request for a non-legal interest rate on the renewed judgment. However, there was no precise calculation and Smith contends denial of due process of law here.

² See: <https://www.latimes.com/archives/la-xpm-1986-08-08-me-1868-story.html>

Smith timely filed a notice of appeal on April 15, 2022 with the United States Court of Appeals for the Ninth Circuit. On August 7, 2023, Respondent filed a motion to dismiss Smith's appeal in the Ninth Circuit. On October 2, 2023 Smith filed his opposition Respondent's motion to dismiss in the Ninth Circuit.

On October 20, 2023, the Ninth Circuit granted Respondent's motion to dismiss and summarily affirmed the judgment. The ruling appears to have been issued on the mistaken contention that Smith's appeal was based solely on Respondent's over 100 violations of local rules mandating text-searchable documents.

On November 10, 2023, Smith filed a motion with the Ninth Circuit to stay the mandate pending his petition for a Writ of Certiorari. As of this date, there has been no ruling on Smith's motion to stay the mandate.

Reasons For Granting An Extension Of Time

The time for Smith to file a Petition for a Writ of Certiorari should be extended for 60 days for the following reasons:

1. Smith desires to be represented by counsel in this litigation because believes his case is highly meritorious but also complex with a record going back over twenty-five years. Plus, as noted by The Supreme Court Press: "Getting a case heard by the Supreme

Court is considerably more difficult than gaining admission to Harvard,” and attorney-submitted petitions have a “success rate” about 2x higher than for petitions submitted by “pro se” parties.³ Therefore, Smith believes it is critical that he be allowed sufficient time to substitute in counsel. Smith had no counsel involved in the immediate litigation below and will require more time to retain counsel to prepare a petition for certiorari. It will take considerable time for any counsel to familiarize themselves with the substantial record and prepare a concise petition of maximum helpfulness to the Court. In addition, Smith contemplates that any sufficiently qualified counsel will have numerous preexistent litigation deadlines in the weeks leading up to and immediately following the current deadline. Smith has also had numerous litigation deadlines in the weeks and months leading up to the current deadline, and also has numerous litigation deadlines immediately preceding and following the current deadline:

- Petition for Rehearing, *Scott Smith vs. Entrepreneur Media, Inc., et al*, California Court of Appeal – Fourth Appellate District (Division Three), Case No. G060839. This case is about Smith’s abuse of process and malicious prosecution case against Respondent and its attorneys. The Appellate Division of the San Francisco Superior Court issued a

³ “Success Rate of a Petition for Writ of Certiorari to the Supreme Court,” https://supremecourtpress.com/chance_of_success.html

scathing Judgment on Appeal that affirmed the trial court's findings that Respondent and its attorneys, "acting in bad faith," had in part, engaged in "abusive conduct" and "unconscionable" and "protracted litigation" tactics in order to "bully and harass" Smith.

- Reply brief, *Entrepreneur Media, Inc. vs. Scott Smith, et al.* California Court of Appeal – Third Appellate District, Case No. C095545. This case is about Respondent's efforts to intimidate and silence Smith by suing him for defamation for speaking out against Respondent's efforts to monopolize the word "entrepreneur" by bullying and suing small businesses and entrepreneurs who cannot afford to fight back.
- Production of relevant documents and information, Attorney Misconduct Complaint against Alexander A. Graft (SBN 239647), State Bar of California, Case No. 23-O-17246. Attorney Graft is one of Respondent's attorneys, and Smith filed this complaint because attorney Graft forged Smith's signature, and then attorney Graft committed perjury by making knowingly false claims against Smith. The State Bar of California determined that Smith's complaint does indicate misconduct by attorney Graft, and opened an investigation.
- Motion for Judgment on the Pleadings and other deadlines, *Scott Smith vs. John Jurin, et al*, Sacramento Superior Court, Case No. 34-2021-00304799-CU-NP-GDS. This case is over one of Respondent's associates hacking into and taking control of one of Smith's financial accounts.

2. In case Smith cannot find substitute counsel, he has been in contact with Cockle Legal Briefs because they "routinely consult with pro se litigants filing briefs in the United States Supreme Court." According to Cockle Legal Briefs' website:

"To stand out in a crowded docket, our team of experts will assist you by:

- Reviewing the individual sections of your document for rule compliance.
- Formatting your documents as required by the Court.
- Proofreading for inconsistencies and grammatical errors.
- Incorporating final edits; printing and binding your legal brief.
- Preparing the certificate of compliance and affidavit of service.
- Filing your documents with the Court and opposing counsel.⁴

Even with the assistance of a company such as Cockle Legal Briefs if Smith cannot find substitute counsel, it will still take Smith, a “pro se” party without formal legal training or a support staff, considerable time to adequately review such a substantial record and prepare a concise petition of maximum helpfulness to the Court.

3. This case presents issues of importance to countless parties nationwide, and the questions to be raised in the certiorari petition involve basic and important federal issues concerning the *Erie Doctrine, Rules Enabling (28 U.S.C. § 2802) and Rules of Decision (28 U.S.C. § 1652) Acts, 14th Amendment, U.S. Constitution*, and questions which Smith contends implicate *Article I, § I, Article III, § II, U.S. Constitution* and applicable state substantive law as applied to renewing judgments.

⁴ Pro Se Litigant Help | Cockle Legal Briefs, <https://www.cocklelegalbriefs.com/pro-se-litigant/>

Specifically, the petition will raise questions regarding the proper application of the *Erie Doctrine/ Rules Enabling and Rules of Decision Acts* standard and under the *Due Process* and *Equal Protection Clauses*, the existence of a “heightened” rational basis, or higher, review standard. The petition will also raise questions regarding waiver and forfeiture issues, issues regarding the enforcement of district court local rules, and issues regarding the Constitutional right of equal access to the courts (i.e. local rules that deny “pro se” litigants equal access to the courts).

At present, Smith finds no uniformity of federal law involving the renewal of judgments and in judgment enforcement.

3. A significant prospect exists that this Court will grant certiorari and reverse the Ninth Circuit.

The Supreme Court is likely to grant a petition for a writ of certiorari when a United States court of appeals has:

decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of [the Supreme] Court.

Sup. Ct. R. 10(c).

As stated, Smith finds no uniformity of federal law to the questions raised in this matter; renewal of judgments and vacating thereon.

Therefore, the issues have not been, but should be, settled by this Court.

This case involves substantial federal question and *Constitutional* issues involving the *Erie Doctrine/ Rules Enabling and Rules of Decision Acts*, arguably, *Article I, § I, Article III, § II, U.S. Constitution*, and additionally, *14th Amendment Due Process and Equal Protection Clauses, U.S. Constitution*.

First, Smith's certiorari petition will present issues relating to the proper application of the *Erie Doctrine/ Rules Enabling and Rules of Decision Acts* – including the issue of whether the district courts can, and should, apply the forum state's statutory law regarding the vacating of renewal of judgments which is inconsistent with the highly deferential review historically and properly applied by federal courts.

Second, Smith's certiorari petition will present issues relating to the scope of conflict between state substantive law and federal procedural law. Such issues are often, and aptly, reviewed by the Supreme Court. *See, Guaranty Trust Co. v. York*, 326 U.S. 99, 109; *Ragan v. Merchants Transfer Co.*, (1949) 337 U.S. 530; *Woods v. Interstate Realty Co.*, 337 U.S. 535; *Bernhardt v. Polygraphic Co.*, 350 U.S. 198, 203-204, 207-208; cf. *Byrd v. Blue Ridge Cooperative*, 356 U.S. 525, *Hanna v. Plumer* (1965) 380 U.S. 460, 466, fn. 5.

“And so the question is not whether a statute of limitations is deemed a matter of ‘procedure’ in some sense. The question is

. . . does it significantly affect the result of a litigation for a federal court to disregard a law of a State that would be controlling in an action upon the same claim by the same parties in a State court?” 326 U.S., at 109.

Smith’s answer to that question is emphatically, yes. Smith’s grounds for vacating Respondent’s defective and improper renewal of judgment using State of California law were for this very reason. This suggests that *Erie*’s main goal was to achieve equal protection under the law; thus, equity and fairness. One way that equal protection is intentionally disregarded would be through “forum shopping,” but the reduction of inequality was the main target of the doctrine. 326 U.S. at 106.

This Court’s rigorous and improper application of federal statutory and procedural law under the Federal Rules of Civil Procedure and review, arguably ensures that many types of State actions will fail even under minimal scrutiny, a result that is contrary to well-settled principles of *Equal Protection Clause* jurisprudence. Further, the Court’s summary analysis, to wit, “questions raised in this appeal are so insubstantial as not to require further argument,” (App. A); creates precedent implying that a “pro se” judgment debtor cannot escape equitable relief where warranted. These constitutional issues undoubtedly present substantial questions that are of exceptional importance for the constitutional balance of powers and

responsibilities between the federal government and the States; issues the Supreme Court is likely to review on certiorari.

Moreover, these constitutional issues and the subject matter of this case implicate appropriate discouragement of forum shopping and litigants rights to *Equal Protection*. For the very reasons the Supreme Court gave for granting certiorari in *Gasperini v. Center for Humanities*, 518 U.S. 415, the Supreme Court is likely to grant review here. 518 U.S. 415.

The Ninth Circuit's granting of Respondent's motion to dismiss and summary affirmance is in serious conflict with the Supreme Court's decisions "Under the *Erie* doctrine, federal courts sitting in diversity apply state substantive law and federal procedural law." *Gasperini*, 518 U.S. 427; see *Hanna*, 380 U.S. 471.

In the two preceding opinions, the Supreme Court followed this rational, "We are reminded by the *Erie* opinion that neither Congress nor the federal courts can, under the guise of formulating rules of decision for federal courts, fashion rules which are not supported by a grant of federal authority contained in Article I or some other section of the Constitution; in such areas state law must govern because there can be no other law." *Hanna*, 380 U.S. 471-72, [Emphasis added.]

Further, although the Supreme Court has established that “[it makes no difference that the facts may be disputed or their effect opposed by argument and opinion of serious strength,” *Vance v. Bradley* (1979) 440 U.S. 93, 112, and “Any other rule would produce the sort of forum shopping and inequitable administration of the laws that *Erie* seeks to avoid.” *Semtek International Inc. v. Lockheed Martin Corp.* (2001) 531 U.S. 497, 498 [blend of law, emphasis added], the district court’s “Order” summarily and inequitably disregarded Smith’s stated reasons why the *California Code of Civil Procedure* should be followed for an alleged want of supporting evidence. (App. A).

This represents a summary of Smith’s issues to be raised in his Writ of Certiorari of which he contends of significant federal question and importance. Thus, Smith contends good cause exists to find counsel to provide adequate briefing and representation, and become familiar with the issues raised by the Federal Circuit’s opinion and prepare the petition.

Therefore, an extension of time will help to ensure that these vitally important and complicated issues are presented to the Court clearly and thoroughly.

Prayer and Conclusion

Smith/applicant submits that the requested extension of time would neither prejudice the Respondent nor result in undue delay in the Court's consideration of the Petition, and that good cause exists to grant the requested extension. As stated above, counsel for Respondent has also informed Smith that Respondent does stipulate to Smith's application to extend time to file his petition for writ of certiorari.

For the foregoing reasons, Smith respectfully requests that the time to file the Petition for a Writ of Certiorari in this matter be extended 60 days, up to and including March 18, 2024.

Dated: January 8, 2024

Respectfully submitted.

A handwritten signature in blue ink, appearing to read "Scott Smith", written over a horizontal line.

Scott Smith,
Petitioner, Pro Se

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

OCT 20 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ENTREPRENEUR MEDIA, INC., a
California Corporation,

Plaintiff-Appellee,

v.

SCOTT SMITH,

Defendant-Appellant.

No. 22-55459

D.C. No.

2:98-cv-03607-PA-PLA

Central District of California,

Los Angeles

ORDER

Before: W. FLETCHER, CALLAHAN, and BENNETT, Circuit Judges.

The motion for an extension of time to respond to the motion to dismiss (Docket Entry No. 38) is granted. The response has been filed.

A review of the record, the opening brief, and the parties' briefing on the motion to dismiss demonstrates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (stating summary affirmance standard). We treat appellee's motion to dismiss (Docket Entry No. 35) as a motion for summary affirmance and grant the motion. The judgment is summarily affirmed.

All other pending motions are denied as moot.

AFFIRMED.