

In the Supreme Court of the United States

DAVID LOWERY,

Petitioner,

v.

BENJAMIN JOFFE; LILLA MARIGZA; RICK BENITTI; BERTHA DAVIS;
JASON TAYLOR; ERIC MYHRE; JOHN E. REDSTONE; MATTHEW
BERLAGE; PATRICK KEYES; KARL H. SCHULZ; JAMES FAIRBANKS;
AARON LINSKY; DEAN M. BASTILLA; VICKI VAN VALIN; JEFFREY
COLMAN; RUSSELL CARTER; STEPHANIE CARTER; JENNIFER
LOCSIN; GOOGLE LLC,

Respondents.

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

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Counsel for Petitioner

Rule 29.6 Statement

Google LLC is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet Inc., a publicly traded company. No publicly-traded corporation owns more than 10% of Alphabet Inc.'s stock.

**TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF
THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE
FOR THE NINTH CIRCUIT:**

Pursuant to Supreme Court Rules 13.5, 22, and 30, Petitioner David Lowery respectfully requests a 30-day extension of time, up to and including June 3, 2022, to file a petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit to review that court's decision in *In re Google Inc. Street View Electronics Communications Litigation*, 21 F.4th 1102 (9th Cir. 2021) (attached as Exhibit A).

Petitioner intends to file a petition seeking review of this judgment under Supreme Court Rule 12. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1). The Ninth Circuit issued its order denying rehearing on February 3, 2022 (attached as Exhibit B). The time to file a petition for a writ of certiorari will expire without an extension on May 4, 2022. This application is timely because it has been filed more than ten days prior to the date on which the time for filing the petition is to expire.

1. This case presents a substantial and important question of federal law: whether, or under what circumstances, a class action settlement that provides no direct pecuniary relief to class members and millions of dollars to third-party *cy pres* recipients affiliated with class counsel and the defendant comports with Fed. R. Civ. Proc. 23. Below, the Ninth Circuit held, following *Lane v. Facebook*, 696 F.3d 811 (9th Cir. 2012), *cert. denied*, *Marek v. Lane*, 571 U.S. 1003 (2013), and *In re Google*

Referrer Header Priv. Litig., 869 F.3d 737 (9th Cir. 2017), *vacated sub. nom. Frank v. Gaos*, 139 S. Ct. 1041 (2019), that it was permissible under Rule 23 to certify the class and approve the settlement. In so doing, the Ninth Circuit reaffirmed a circuit split with the Third, Fifth, Seventh, and Eighth Circuits. See *In re Baby Prods. Antitrust Litig.*, 708 F.3d 163 (3d Cir. 2013); *Klier v. Elf Atochem North America, Inc.*, 658 F.3d 468 (5th Cir. 2011); *Pearson v. NBTY, Inc.*, 778 F.3d 772 (7th Cir. 2014); *In re BankAmerica Corp. Securities Litigation*, 775 F.3d 1060 (8th Cir. 2015). This Court already granted review of this precise question in *Frank v. Gaos*, but ultimately vacated there on jurisdictional grounds with only Justice Thomas reaching the Rule 23 questions. 139 S. Ct. 1041.

2. Theodore H. Frank is counsel of record for Petitioner in this case. His first child was born prematurely on March 11, 2022, and is currently in a neonatal intensive care unit. He has an oral argument scheduled in the U.S. Court of Appeals for the Ninth Circuit on May 11, 2022; appellate briefs in the U.S. Court of Appeals for the Sixth Circuit due April 13 and May 19, 2022; and a dispositive motion briefing in the Northern District of California due April 22, 2022. In addition, he argued an appeal in the U.S. Court of Appeals for the Eighth Circuit on February 17, 2022; and had an appellate brief in the U.S. Court of Appeals for the Ninth Circuit due on March 2, 2022. All of these commitments will limit counsel's availability to work on this matter between today and May 4, 2022, or have limited counsel's availability to work on this matter before today.

3. Counsel for Google and counsel for the named plaintiffs do not oppose this motion.

Accordingly, petitioner respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari for 30 days, up to and including June 3, 2022.

March 16, 2022

Respectfully submitted,



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