

No. _____

In the Supreme Court of the United States

CUKER INTERACTIVE, LLC
PETITIONER,

v.

PILLSBURY WINTHROP SHAW PITTMAN LLP

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

To the Honorable Elena Kagan, Associate Justice of the United States and
Circuit Justice for the Ninth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.2 of this Court, Petitioner Cuker Interactive, LLC, respectfully requests a 30-day extension of the time in which to file a petition for a writ of certiorari to the U.S. Court of Appeals for the Ninth Circuit in this Court, up to and including Thursday, June 30, 2022. The Ninth Circuit entered its judgment on March 2, 2022. A copy of the Ninth Circuit's opinion is attached as Exhibit 1. *See In re Cuker Interactive, LLC*, No. 21-55298, 2022 WL 612671 (9th Cir. Mar. 2, 2022). No party filed a request for rehearing in the Ninth Circuit. Accordingly, Petitioner's time to file a petition for writ of certiorari in this Court will currently expire on Tuesday, May 31, 2022. Further, Petitioner has

filed this Application more than 10 days before the existing deadline to file a petition for a writ of certiorari. Rules 13.5, 30.2.

Petitioner has good cause for a 30-day extension of time in which to file a petition for a writ of certiorari. Rule 13.5.

First, this case presents a substantial and recurring question on which the federal circuit courts are divided: whether federal choice-of-law rules or the forum State's choice-of-law rules apply to state-law claims and state-law issues litigated in a bankruptcy forum.

In this case, Pillsbury Winthrop Shaw Pittman LLP ("Pillsbury") represented Petitioner in litigation against Walmart in an Arkansas federal district court. *In re Cuker Interactive, LLC*, No. 20-CV-01882-CAB-BLM, 2021 WL 1140894, at *1 (S.D. Cal. Mar. 25, 2021), *aff'd*, No. 21-55298, 2022 WL 612671 (9th Cir. Mar. 2, 2022). After a jury trial, the Arkansas federal district court entered judgment in favor of Petitioner, including for attorney's fees and sanctions. *Id.* While the litigation was ongoing, Pillsbury sent a letter to counsel for Walmart purporting to assert an attorney's lien under Arkansas law on amounts owed by Walmart to Petitioner in the lawsuit. *Id.*

Petitioner subsequently filed for Chapter 11 bankruptcy in the Southern District of California. *Id.* In that bankruptcy proceeding, Pillsbury filed a proof of claim with the bankruptcy court asserting a claim purportedly secured by an attorney's lien on the judgment and proceeds of the Walmart lawsuit and perfected by its prior letter to Walmart's counsel. *Id.* Petitioner disputed whether Pillsbury's

claim was secured or unsecured before the bankruptcy court. *Id.* The bankruptcy court held that Pillsbury’s claim was unsecured under California law, applying federal choice-of-law rules per the Ninth Circuit’s binding decision in *Lindsay v. Beneficial Reinsurance Co. (In re Lindsay)*, 59 F.3d 942, 948 (9th Cir. 1995). *Id.*

The district court reversed the bankruptcy court, holding that Arkansas law—not California law—governed to the parties’ dispute, under federal choice-of-law rules, and that Pillsbury’s claim was secured under Arkansas law. *Id.* at *1, *4.

On appeal from the district court, the Ninth Circuit rejected Petitioner’s initial request for the *en banc* court to overrule *In re Lindsay* and apply the forum State’s choice-of-law rules in bankruptcy proceedings, in light of a lopsided circuit split that had developed since *In re Lindsay* was decided. *In re Cuker Interactive, LLC*, No. 21-55298, Dkt.36 (9th Cir. Oct. 12, 2021); Appellant’s Opening Brief, *In re Cuker Interactive, LLC*, No. 21-55298, Dkt.14 at 5, 2021 WL 2673026 (C.A.9). The panel of the Ninth Circuit below then affirmed the district court, holding in relevant part that its decision in *In re Lindsay* requires that “federal choice-of-law rules determine which state’s substantive law applies” in bankruptcy proceedings, not the forum State’s choice-of-law rules. Ex.1 at 2.

The Ninth Circuit’s opinion reaffirms an acknowledged, longstanding, and lopsided circuit split over whether federal choice-of-law rules or the forum State’s choice-of-law rules apply to state-law claims and state-law issues litigated in a bankruptcy forum. The Second Circuit, *In re Gaston & Snow*, 243 F.3d 599, 605–07 (2d Cir. 2001); the Third Circuit, *Robeson Indus. Corp. v. Hartford Accident & Indem.*

Co. (In re Robeson Indus. Corp.), 178 F.3d 160, 164–65 (3d. Cir. 1999); and the Fourth Circuit, *Compliance Marine, Inc. v. Campbell (In re Merritt Dredging Co.)*, 839 F.2d 203, 206 (4th Cir. 1988), all hold that the forum State’s choice-of-law rules apply to state-law claims and state-law issues litigated in a bankruptcy forum. The Fifth Circuit has also supported that conclusion. *Deutsche Bank Tr. Co. Ams. v. U.S. Energy Dev. Corp. (In re First River Energy, L.L.C.)*, 986 F.3d 914, 931 n.19 (5th Cir. 2021). In direct conflict, the Ninth Circuit’s opinion below reaffirms its holding in *In re Lindsay* that federal choice-of-law rules apply to state-law claims and state-law issues litigated in a bankruptcy forum. Ex.1 at 2.

Second, Counsel for Petitioner is working diligently on the petition for a writ of certiorari, but respectfully submits that an extension of 30 days is necessary to complete preparation of the petition. This case involves difficult choice-of-law and bankruptcy issues upon which there is a clear and longstanding division of circuit-court authority. Indeed, “[p]erhaps no legal subject has caused more consternation and confusion among the bench and bar than choice of law.” *Chen v. L.A. Truck Ctrs., LLC*, 7 Cal. 5th 862, 867 (2019) (quoting Smith, *Choice of Law in the United States*, 38 Hastings L.J. 1041 (1987)). Further, certain of the below-listed Counsel only recently joined this case at the petition-for-certiorari stage. Accordingly, substantial work remains for Counsel for Petitioner to complete review of the record of the case, to conclude research on the authorities supporting this Court’s review, and to finish preparing the petition and appendix for filing.

Finally, Counsel for Petitioner have had, and continue to have, numerous conflicts and overlapping deadlines in other matters during the current deadline for the filing of a petition for writ of certiorari in this case, as well as other impending deadlines. Among other recent deadlines in the past, certain Counsel for Petitioner had an oral argument in the Fourth Circuit in *Henderson v. The Source For Public Data, L.P.*, No.21-1678 (4th Cir.), on May 3, 2022; an oral argument in the D.C. Circuit in *Cherokee County v. FERC*, No.21-1163 (D.C. Cir.), on May 6, 2022; and numerous briefing deadlines and oral arguments in the New York state courts in *Harkenrider v. Hochul*, ___ N.E.3d___, 2022 WL 1236822 (N.Y. Apr. 27, 2022). As for upcoming deadlines, certain Counsel for Petitioner have a reply brief due in the Eastern District of Wisconsin in *EEOC v. Walmart*, No. 1:17-cv-70 (E.D. Wis.), on June 9, 2022; a reply brief in the D.C. Circuit in *Ameren Illinois Co. v. FERC*, No.20-1277 (D.C. Cir.), on June 17, 2022; and other briefing deadlines. Other Counsel for Petitioner has upcoming summary-judgment briefing deadlines in *PCA Acquisitions V, LLC v. Alexander*, No. CV-2021-54 (2nd Judicial Dist. Cir. Ct., Wyo.); ongoing substantive proceedings in *Madrid et al. v. NewRez, LLC et al*, No. 2 :22-cv-00010-JAM-DB (E.D. Cal.), *Griffin v. Phillips & Cohen Associates, Ltd.*, Case No. 1:22-cv-02640 (S.D.N.Y.), and other cases; and other deadlines.

For the foregoing reasons, Petitioner respectfully requests that this Court grant this Application and extend Petitioner's time to file a petition for writ of certiorari by 30 days, up to and including Thursday, June 30, 2022.

Respectfully submitted,

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