

No. 22-18

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IN THE  
**Supreme Court of the United States**

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CUKER INTERACTIVE, LLC,  
*Petitioner,*  
v.  
PILLSBURY WINTHROP SHAW PITTMAN, LLP,  
*Respondent.*

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**On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Ninth Circuit**

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**SUPPLEMENTAL BRIEF FOR RESPONDENT**

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## **INTRODUCTION**

Pursuant to this Court's Rule 15.8, respondent Pillsbury Winthrop Shaw Pittman, LLP ("Pillsbury") respectfully submits this supplemental brief to advise the Court of recent developments that render the pending petition moot.

On November 6, 2022, petitioner Cuker International, LLC ("Cuker") satisfied an arbitration award resolving the fee dispute that underlies the adversary proceeding out of which the petition arises. In light of the resolution of Pillsbury's claims, Cuker moved to close the segregated account holding the proceeds from a judgment over which Pillsbury had asserted an attorney's lien. On November 29, 2022, the Bankruptcy Court granted the motion and authorized the release of the funds in the account to Cuker.

This order provides Cuker the relief its complaint requested and more. As a consequence, there is no longer any legal relief to provide, and this case has become moot.

For this reason, as well as those previously stated by Pillsbury, the petition should be denied.

**ARGUMENT****I. CUKER’S COMPLAINT ASKED TO AVOID PILLSBURY’S LIEN AND TO RECOGNIZE CUKER’S ENTITLEMENT TO THE FUNDS IN THE SEGREGATED ACCOUNT**

In the complaint underlying the pending petition, Cuker requested that the attorney’s lien asserted by Pillsbury over funds from a judgment in Arkansas be declared invalid and that Cuker’s entitlement to those funds be recognized.

As Pillsbury explained in its responding brief (filed on August 15, 2022), Cuker retained Pillsbury to act as lead counsel in a trial against Walmart in the Western District of Arkansas. Resp. Br. 3. Through what the trial court described as “enormous skill and effort” Pillsbury secured for Cuker a judgment of nearly \$3.5 million against Walmart. Resp. Br. at 4 (quoting SER 79). Prior to this judgment, Pillsbury gave Cuker written notice under Arkansas law of a lien securing its unpaid fees. Resp. Br. at 4. When Cuker later commenced a chapter 11 bankruptcy in California without paying those fees, Pillsbury filed a proof of claim asserting a security interest in the Arkansas judgment, Resp. Br. 5, and Walmart paid the amount awarded in the judgment into a segregated account where those funds were held subject to liens asserted by Pillsbury and Cuker’s other counsel. Pet. 29a.

Cuker subsequently filed an adversary proceeding in the California Bankruptcy Court “to determine the validity and extent of the lien claimed by Pillsbury.” 1 ER 143. Even though Pillsbury’s lien concerned a judgment obtained after a trial in Arkansas, Cuker alleged that California law governs the lien’s validity

and that under California law Pillsbury had “no allowable lien in or against the funds now held in the Segregated Account.” 1 ER 145.

Cuker’s complaint prayed for the following relief:

1. a declaration that Pillsbury has no secured interest in the proceeds from the Arkansas judgment, *see* 1 ER 146 (requesting “[a] judicial declaration that the PWSP Claim is a non-priority unsecured claim”); *see also* 1 ER 143 (defining “PWSP Claim” to mean the lien claimed by Pillsbury in its proof of claim), and
2. a judgment recognizing Cuker’s entitlement, free of any interest of Pillsbury, to the segregated account holding those proceeds, *see* 1 ER 146-47 (requesting “[e]ntry of judgment that [Pillsbury’s] interest in the Segregated Account be avoided and that such interest be preserved and recovered by Cuker for the benefit of the bankruptcy estate”).

Cuker’s petition for certiorari raises a subsidiary question concerning the Pillsbury lien: what choice-of-law rules should have been used to determine the state law governing the lien’s validity. Applying federal choice-of-law rules, the Court of Appeals held that the lien’s validity is governed by the law of Arkansas, where Pillsbury represented Cuker at trial, and that the lien is valid under Arkansas law. Pet. App. 2a-5a. In the pending petition, Cuker contends that (i) the choice-of-law rules of the forum state, California, should have been used, (ii) under those rules California law governs, and (iii) under California substantive law the lien is invalid. Pet. 13-19, 21-22. *But see* Resp.

Br. 14-17 (showing that the petition's choice-of-law analysis is contrary to "overwhelming precedent").

**II. NOW THAT PILLSBURY'S FEE CLAIM HAS BEEN SATISFIED AND ITS LIEN RELEASED, CUKER HAS OBTAINED GIVEN CONTROL OF THE FUNDS IN THE SEGREGATED ACCOUNT**

Since the pending petition was briefed, the fee claim by Pillsbury underlying the parties' dispute has been resolved in arbitration and the resulting award satisfied. As a result, Pillsbury no longer claims any interest, secured or otherwise, in the proceeds from the Arkansas judgment, and the Bankruptcy Court has authorized distribution of the segregated account holding those proceeds to Cuker.

While Cuker was pursuing the underlying adversary action challenging Pillsbury's lien to secure its unpaid fees, the fee dispute between Cuker and Pillsbury, as well as other matters arising out of Pillsbury's representation of Cuker, was submitted to arbitration. On September 14, 2022, the arbitrators issued an award resolving those disputes. ECF 587-2 ¶ 7. The award rejected Cuker's claims of malpractice and breach of fiduciary duty, denied Pillsbury additional attorney's fees, but awarded Pillsbury out-of-pocket costs of \$26,127.06. *Id.*

Cuker's reorganization plan requires it to pay in full the costs awarded Pillsbury plus interest, with the precise interest rate depending on whether Pillsbury has a valid lien on the funds in the segregated account. ECF 460 at 24. Pillsbury decided to waive this interest in light of the small amount of the award. ECF 587-1 ¶ 4. Because the interest on the award of costs would be minimal whether or not Pillsbury's lien is valid, it

would be unproductive to litigate over the interest. Pillsbury therefore informed Cuker that it was waiving *any* interest on the award, and on November 16, 2022 Cuker wired Pillsbury \$26,127.06, which Pillsbury accepted in full satisfaction of its fee claims. ECF 587-2 ¶ 9; ECF 589 ¶ 5. Pillsbury later confirmed that it has no continuing interest in the funds in the segregated account and released the lien it had asserted on those funds. ECF 589 ¶ 6.

In light of the satisfaction of Pillsbury's claims and the resolution of the claims of its other counsel, Cuker moved to close the segregated account. ECF 587. In so doing, Cuker expressly noted that Pillsbury has "no further claim to any contents of the Segregated Account." *Id.* at 4. On November 29, 2022, the Bankruptcy Court granted Cuker's motion and authorized the debtor "to close the Segregated Account" and "disburse to [Cuker] all funds" in the account. ECF 588 at 2. Thus, Cuker now has control over the proceeds from the Arkansas judgment free from any Pillsbury lien.

### **III. AS CUKER HAS OBTAINED THE RELIEF ITS COMPLAINT REQUESTED AND MORE, THIS CASE IS NOW MOOT**

Because Cuker has obtained the relief requested in its complaint, there is no longer any judicial relief to provide, and this case is therefore moot.

"Article III of the Constitution grants the Judicial Branch authority to adjudicate 'Cases' and 'Controversies,'" *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 90 (2013), and such a case or controversy "must be extant at all stages of review, not merely at the time of the complaint is filed." *United States v. Sanchez-Gomez*, 138 S. Ct. 1532, 1537 (2018) (quotation omitted).



Consequently, a case becomes moot, and beyond the jurisdiction of the courts, if a plaintiff obtains all the relief that it sought, and it becomes “impossible for the court to grant ‘any effectual relief whatever’ to a prevailing party.” *Church of Scientology of California v. United States*, 506 U.S. 9, 12 (1992) (quoting *Mills v. Green*, 159 U.S. 651, 653 (1895)). In particular, a case becomes moot if a plaintiff obtains “the precise relief . . . requested in the[] prayer for relief in [its] complaint.” *New York State Rifle & Pistol Ass’n, Inc. v. City of New York*, 140 S. Ct. 1525, 1526 (2020) (per curiam).

Here, Cuker has obtained the relief for which it prayed in its complaint and more. As noted above, in its complaint, Cuker requested a declaration that Pillsbury has no lien or other secured interest in the proceeds from the Arkansas judgment, 1 ER 146, and a judgment recognizing Cuker’s entitlement to the funds from those proceeds held in the segregated account, 1 ER 146-47.<sup>1</sup> Cuker has received this relief. In addition to waiving any claim to interest and accepting payment in satisfaction of its fee claims, Pillsbury has confirmed that it “has no continuing interest in, or claim, to, the funds in the Segregated Account” and has expressly released any lien it may have had on those funds. ECF 589 ¶ 6. Further, recognizing Cuker’s entitlement to the proceeds from the Arkansas judgment, the Bankruptcy Court has closed the segregated account and authorized disbursement of all the funds in it to Cuker. ECF 588 at 2. In other words, Cuker’s entitlement to the funds in

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<sup>1</sup> Cuker also prayed for attorney’s fees, 1 ER 147, but it asserted no grounds for such extraordinary relief, and in any event the Bankruptcy Court did not grant fees in its judgment, 1 ER 35, which Cuker did not appeal.

the segregated account free from any lien claimed by Pillsbury has not only been recognized; it now has actual control over those funds.

Because Cuker has obtained the relief it requested and more, there is no judicial relief to provide, and this case is moot. *See, e.g., New York State Rifle & Pistol Ass'n*, 140 S. Ct. at 1526; *American Foreign Serv. Ass'n v. Garfinkel*, 490 U.S. 153, 159 (1989); *Alvarez v. Smith*, 558 U.S. 87, 92-94 (2009). Moreover, because Cuker obtained this relief because it paid the arbitration award and it moved to close the segregated account, the decision below should not be vacated. *See U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18, 24 (1994).

### CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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