

No. \_\_\_\_\_

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

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JOHNSON & JOHNSON, a New Jersey Corporation; ETHICON, INC., a New Jersey Corporation; AND ETHICON US, LLC,

*Petitioners,*

*v.*

STATE OF CALIFORNIA,

*Respondent.*

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**APPLICATION TO THE HON. ELENA KAGAN  
FOR A 30-DAY EXTENSION OF TIME WITHIN WHICH TO FILE  
A PETITION FOR A WRIT OF CERTIORARI TO  
THE CALIFORNIA COURT OF APPEAL**

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Pursuant to Rule 13.5 of the Rules of this Court, Applicants Johnson & Johnson, Ethicon, Inc., and Ethicon US, LLC move for an extension of time of 30 days, up to and including November 10, 2022, within which to file a petition for a writ of certiorari.

1. Applicants will seek review of the judgment in *People v. Johnson & Johnson*. A copy of the California Supreme Court's decision to deny Applicants' petition for review, No. S274680 (Cal. July 13, 2022), is attached as Exhibit 1. A copy of the California Court of Appeal's modified opinion and decision denying rehearing, D077945 (Cal. Ct. App. Apr. 27, 2022), is attached as Exhibit 2. The current deadline for filing a petition for writ of certiorari is October 11, 2022. This application is filed more than 10 days before the date the petition is due. *See Sup.*

Ct. R. 13.5. The jurisdiction of this Court is based on 28 U.S.C. § 1257(a).

Respondents do not object to this extension request.

2. Good cause exists for an extension. An extension is justified by the press of business on numerous other matters. The undersigned is responsible for the following engagements, which make it difficult for counsel to prepare the petition for a writ of certiorari by the current deadline:

- 1) A reply brief in support of a petition for writ of certiorari in *Clendening v. United States*, S. Ct. No. 21-1410, due September 20, 2022.
- 2) A reply brief in *Collins v. The Doe Run Resources Corp.*, No. 22-1848 (8th Cir.), due September 30, 2022.
- 3) A reply brief in *Gilead Sciences, Inc. v. The Superior Court of the City and County of San Francisco*, No. A165558 (Cal. Ct. App.), due October 11, 2022.
- 4) A reply brief in support of a petition for writ of certiorari in *Priva v. Garland*, S. Ct. No. 22-134, due October 26, 2022.
- 5) A reply brief in support of a petition for writ of certiorari in *Medders v. Comm’r of Soc. Sec.*, S. Ct. No. 22-79, due November 7, 2022.

3. In addition, an extension is warranted because this case presents a substantial and important question of law: whether, consistent with the Due Process Clause, a civil penalty may be imposed without fair notice of the prescribed conduct or the resulting severity of the penalty—here, more than \$300 million against Applicants for hundreds of thousands of claimed violations of California’s Unfair Competition Law (UCL), Cal. Bus. & Prof. Code § 17200 et seq., and False Advertising Law (FAL), Cal. Bus. & Prof. Code § 17500 et seq.

4. The question Applicants will present to the Court is one of widespread significance. The lack of fair notice in state consumer protection statutes, and the

potential for arbitrary and unpredictable fines, is a nationwide problem with significant consequences. Businesses may forego marketing certain products or operating in certain states because the attendant risks are too uncertain. It is impossible to make rational decisions based on the law when it is unclear how the law will be applied. And the California Court of Appeal's decision, if allowed to stand, will serve as a template for other states to impose vast penalties without sufficient protections.

6. An extension of time will help to ensure that the petition clearly and thoroughly presents the important issue raised by the California Court of Appeal's decision.

7. For the foregoing reasons, Applicants hereby request that an extension of time be granted, up to and including November 10, 2022, within which to file a petition for a writ of certiorari.

Respectfully submitted,

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