

APP. NO. \_\_\_\_\_

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**IN THE SUPREME COURT OF THE UNITED STATES**

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(Appeal of) MARK BARINHOLTZ,

Petitioner,

vs.

HOMEADVISOR, INC., *et al.*,

Respondents.

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**MOTION FOR EXTENSION OF TIME TO FILE PETITION  
FOR WRIT OF CERTIORARI PURSUANT TO RULE 13(5)**

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To the Honorable Amy Coney Barrett, as Circuit Justice for the United States  
Court of Appeals for the Seventh Circuit:

Petitioner, Mark Barinholtz, pursuant to Rule 13(5) of the Rules of the Supreme  
Court, respectfully seeks a sixty (60) day extension of time within which to file his  
Petition for a Writ of *Certiorari* in this Court, to and including October 28, 2022.

This application is submitted more than ten (10) days prior to the scheduled filing  
date for the Petition. The dates pertinent here are:

- **April 8, 2022** – (1) “Order” (designated “Nonprecedential Disposition, To be cited only in accordance with Fed. R. App. P. 32.1” (CA07 Cir. Dkt. 52, p. 1; <sup>1</sup> (Appx. “A” hereto), affirming the district court’s award of certain costs-of-defense in favor of the HomeAdvisor defendants, and an order pertaining to an ill-defined, unprecedented CLE attendance as a sanction; and (2) “Final Judgment” in accordance with the Court’s affirmance (CA07 Cir. Dkt. 53; Appx. “B” hereto.)
- **May 31, 2022** – “Order” denying Petition for Rehearing and Petition for Rehearing *en banc*. (CA07 Cir. Dkt. 59; Appx. “C” hereto.)
- **August 19, 2022** – Timeliness date for seeking 60-day extension of time within which to file a Petition for Writ of *Certiorari* in the United States Supreme Court.
- **August 29, 2022** – Timeliness date for filing Petition for Writ of *Certiorari*, unless extended.

Movant (Respondent *Pro Se* Mark Barinholtz) hereby moves to extend the time in which to file a Petition for Writ of *Certiorari* in the above-captioned case. Movant is currently taking steps to prepare for filing such petition for a writ of certiorari in this case. Accordingly, and further to the matters stated below, Movant asks that this Court extend the deadline for filing of a certiorari petition and/or, if a certiorari petition is filed, to stay further proceedings in the district court until the petition is finally resolved.

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<sup>1</sup> The Order also appears on Westlaw: (2022 WL 1056086, N.D.Ill. Apr. 8, 2022), though the Order’s designation as “Nonprecedential,” not for publication in the official reporter, is missing.

Movant believes and herein relies upon the federal statutory provision which confers jurisdiction on the Supreme Court in these circumstances, namely, 28 U.S.C. § 1254(1). That statute provides that cases decided by the federal Courts of Appeal may be reviewed by the Supreme Court “by writ of certiorari granted upon the petition of any party to any civil ... case, ... after rendition of judgment.”

Good cause exists for granting an extension of time: (1) a reasonable probability of succeeding on the merits (meaning both that the Supreme Court will grant certiorari and that it will reverse) and (2) irreparable injury absent a stay. *Id.*” see also *In re A.F. Moore & Assoc., Inc.*, 974 F.3d 836; 2020 WL 5422791, at \*3 (7th Cir. 2020) (per curiam) (See also, CA7 Practitioner’s Handbook, 2020 ed., p. 215).

Rule 13 of the United States Supreme Court allows ninety (90) days in most instances to file a petition for a writ of certiorari. The Seventh Circuit Court of Appeals, in a *per curiam* disposition devoid of citations to the record, and heard without allowing oral argument, entered a final judgment predicated upon a 6-page “Non-precedential Disposition” April 8, 2022 (CA07 Cir. Dkt. 53; see Appx. “A” and “B” hereto). Movant’s Petition for Rehearing *En Banc* was denied on May 31, 2022 (Appx. “C” hereto).

There is a reasonable probability that the Supreme Court will grant certiorari in order to reverse the Seventh Circuit’s non-precedential affirmance of the District Court’s rulings. Important questions of federal appellate jurisdiction are presented by these circumstances, including the distinctions between federal time-limitations in statutes versus time-limitations in claims processing rules, and, all in the context of the jurisdictional concepts of timeliness and finality (Fed. R. App. P. 3, and 4; Fed. R. Civ. P.

59, and 60). These concepts of important nationwide scope to federal court practice are brought into sharp focus here, including as analyzed in depth in *Hamer v. Neighborhood Housing Services of Chicago*, 138 S.Ct. 13 (2017). That case has been misapplied in this matter by the district court and the Seventh Circuit itself. Also brought to the fore here are Federal Rules of Civil Procedure 11 and 37, and the maze of updates and cross-references leading to a less than clear, unfair and complex set of grounds and standards, particularly for awarding non-monetary sanctions as is the case here. Additionally, on occasion the Supreme Court weighs in on assessment and allocation of post-judgment attorney fees. See, *Fogerty v. Fantasy, Inc.*, 510 U.S. 517 (1994) (reversing both lower courts).

Movant further alleges there is an ongoing, irreparable injury incident to this Court's April 8, 2020 non-precedential disposition (CA07 Cir. Dkt. 52; Appx. "A" hereto). It is no small matter that rulings of both the district court, and the Non-precedential disposition of the Court of Appeals, both based on misunderstandings of facts and misapplication of laws, leave a defamatory sting in the record. HomeAdvisor Defendants have demonstrated a clear intent to flout the spirit, if not the letter, of modern efforts to enforce a sense of proportionality into the Federal Rules of Civil and Appellate Procedure designed to prevent abuse of federal courts for such meretricious purposes.

There will be no prejudice to the HomeAdvisor Defendants-Respondents if the Court allows the 60-day extension. Although Defendants-Respondents, after initially balking at appearing in the Court of Appeals, appeared and filed a brief in the Seventh Circuit, Defendants HomeAdvisor have taken no steps to enforce against Petitioner.

There is good cause for the 60-day extension. If the 7<sup>th</sup> Circuit Court's affirmance of the last orders of the District Court become final, the Supreme Court may be deprived of the opportunity to further review this case at all.

Moreover, further proceedings, if any are conducted in the district court, would, if certiorari is granted, and particularly if the Court of Appeals is reversed, will cause a needless waste of resources all around, including to the courts involved.

In addition to the foregoing, Movant is otherwise engaged to the best of his ability in litigation, pre-litigation and office transactional obligations for which he alone is professionally responsible at all times relevant. Further, Petitioner underwent non-routine eye surgery at Northwestern Hospital on July 28, 2022, and is still in a recuperative phase for several more weeks hence. Lastly, Movant is contemplating an office relocation shortly, which will further impact Movant's ability to devote sufficient time to the petition for a writ of certiorari.

Movant has caused the foregoing Motion to extend time to be prepared pursuant to applicable Rules of the Supreme Court of the United States, and hereby certifies such Motion is made for reasons above stated, and solely to protect rights of Movant herein.

## CONCLUSION

WHEREFORE, for the foregoing reasons, Petitioner 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 October 28, 2022.

Dated: August 17th, 2022

Respectfully submitted,

MARK BARINHOLTZ, Petitioner\*

By /s/ Mark Barinholtz  
Attorney–Petitioner *Pro Se*  
*Counsel of record\**  
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**CERTIFICATE OF SERVICE**

The undersigned, attorney-petitioner *pro se* herein, certifies that a true and correct copy of the foregoing Petitioner’s Motion to Extend Time to File a Petition for Writ of Certiorari, was served upon the Defendants-Respondents' attorneys of record below, via email and U.S. Mail to their addresses stated below, in accordance with Supreme Court Rules 22.2 and 29.3, at Chicago, Illinois this 17th day of August, 2022:

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By            /s/ *Mark Barinholtz*  
Attorney–Petitioner *pro se*