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LLP

November 7, 2024

The Honorable Scott S. Harris
Clerk of the Court
Supreme Court of the United States
One First Street, N.E.
Washington, DC 20543

Via E-filing and USPS Priority Mail
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Re: Chanel E. M. Nicholson v. W.L. York, Inc., d/b/a Cover Girls, et al., No. 23-20440

Dear Mr. Harris:

I write on behalf of respondents W.L York, Inc., d/b/a Cover Girls and D WG FM, Inc., d/b/a Splendor, to request a second extension of time to oppose the petition for writ of certiorari in this matter. The current deadline is November 26, 2024, and respondents respectfully seek an extension of sixty days, up to and including January 27, 2025, to file their opposition. The extension is warranted because trial is set for November 18, 2024 in a related case testing the issues raised in the petition. Civil Action No. 4:23-cv-01025; *Chanel E.M. Nicholson et al v. A.H.D. Houston, Inc., et al*; In the Southern District of Texas (“*Nicholson II*”).

The Fifth Circuit ruled below in this case, “as the Supreme Court and this court have clarified, the continuing violations doctrine applies only in the context of hostile work environment claims, which Nicholson does not allege in this case.” *Nicholson v. W.L. York, Inc.*, No. 23-20440, 2024 WL 913378, at *4 (5th Cir. Mar. 4, 2024) (citing *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 122 (2002)). The circuit further explained that “[w]e take no position on whether Nicholson’s claims would succeed under *Morgan* if she had alleged a hostile work environment claim against Splendor or Cover Girls.” *Id.*, n. 8.

In *Nicholson II*, petitioner in this case together with another plaintiff put this ruling to the test by alleging a hostile work environment claim based on the same facts and circumstances as this case to test application of the continuing violations doctrine. Although the trial dismissed the claims asserted by petitioner herself under *res judicata*, summary judgment is now pending before the trial court on the continuing violations as to the other plaintiff asserting a hostile work environment claim. (See *Nicholson II*; Dkt. No. 33, Dkt. No. 34). The trial court may well rule on that issue at docket call set for November 15, 2024. (See *Nicholson II*, Dkt. No. 44). Alternatively, the case is set for trial on November 18, 2024.

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Nicholson II's upcoming disposition has obvious implications for this Court's consideration of the Petition for Certiorari. In the interest of conserving judicial resources and avoiding the potential need for supplemental briefing, respondent therefore requests a second extension for sixty days or until such time as the trial court enters final judgment in *Nicholson II*.

Lastly, respondent requests a second extension to accommodate counsel's trial schedule in *Nicholson II* and in another matter. On November 12, 2024, counsel for respondents is scheduled to appear for a preferential trial setting in Galveston, Texas¹ until at least Friday, November 15, 2024.

We conferred with petitioner and she does not oppose this request. Please return a file stamped copy of this motion in the enclosed self-addressed envelope.

Thank you very much for your consideration.

Respectfully submitted,



Benjamin W. Allen
Counsel for Respondents

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¹ Cause No. 22-CV-2341; *Kimberly Cotton v. A&D Interests, Inc.*; In the 56th District Court, Galveston County, Texas.