

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

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In the  
Supreme Court of the United States

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Roxana Towry Russell,

*Applicant,*

Walmart Inc. and Wal-Mart.com USA, LLC,

*Respondents.*

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**APPLICATION TO EXTEND THE TIME TO FILE  
A PETITION FOR A WRIT OF CERTIORARI**

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

Pursuant to Supreme Court Rules 13.5 and 22, applicant Roxana Towry Russell, through counsel, respectfully requests a 60-day extension of time to file a petition for a writ of certiorari, up to and including Monday, March 23, 2026 (the sixtieth day falls on a Sunday). On June 18, 2025, a panel majority of the United States Court of Appeals for the Ninth Circuit entered a judgment affirming-in-part, reversing-in-part, and vacating and remanding in part the district court's judgment in her favor. Exhibit A. One member of the panel dissented and would have affirmed the judgment. *Id.* On October 23, 2025, the court of appeals denied Ms. Russell's

timely filed petition for rehearing and rehearing en banc. Exhibit B. Absent an extension, Ms. Russell's petition for a writ of certiorari would be due on January 21, 2026. This application is timely filed at least ten days before that deadline. This Court has jurisdiction based on 28 U.S.C. § 1254(1).

Respondents Walmart Inc. and Wal-Mart.com USA, LLC (collectively "Walmart") do not object to the application.

### **Background**

Ms. Russell is an artist who designed a line of sculptural pendant lamps, which she also photographed. She started a business selling her lamps and obtained copyright registrations for both her sculptural works (her lamps) and her pictorial works (her photographs of her lamps).

Listings subsequently appeared on Walmart.com using Ms. Russell's copyrighted photographs to sell cheap imitation lamps that infringed her copyrighted sculptural works. The listings stated that the lamps were "Sold & shipped by Walmart." Ms. Russell sued Walmart for infringement of her copyrighted sculptural and pictorial works.

After a trial and a jury verdict in her favor on all five of her direct and indirect copyright infringement claims, the district court entered judgment in favor of Ms. Russell on her copyright infringement claims and awarded damages. Walmart appealed the judgment, but never appealed the later (post-notice of appeal) denial of its Rule 50(b) motion for judgment as a matter of law. The district court subsequently granted Ms. Russell's motion for attorneys' fees, which Walmart separately appealed.

On appeal, Walmart and the Ninth Circuit conceded that Walmart did not appeal the denial of its Rule 50(b) motion, and that the denial of that motion was not before the court of appeals. Exhibit A at ECF p. 3 & n.1. The Ninth Circuit nonetheless held that it could review the district court's denial of Walmart's pre-verdict motion for judgment as a matter of law under Rule 50(a). *Id.* at 3 & n.1, 6 n.2. On that basis, the court affirmed with respect to Ms. Russell's copyrighted sculptures, *id.* at 3-4, but held that there was insufficient evidence to support the jury's verdict with respect to Ms. Russell's copyrighted photographs under either a direct or indirect theory of copyright infringement liability, *id.* at 4-6. Judge Desai dissented with respect to the photographs. She concluded that "Russell presented sufficient evidence for the jury to find Walmart liable for copyright infringement on all counts" and criticized the majority for "improperly reweigh[ing] the evidence in Walmart's favor" and "usurp[ing] the jury's judgments for its own." *Id.* at 10-11 (Desai, J., concurring in part and dissenting in part).

### **Questions to Be Presented for Review**

While she is continuing to evaluate, Ms. Russell currently expects to present several reasons for granting a writ. One is that the Ninth Circuit's decision rejecting indirect copyright liability against Walmart here is likely to be impacted by this Court's forthcoming decision in *Cox v. Sony Music*, Case No. 24-171, which will provide additional guidance as to the appropriate standard for indirect copyright liability. Accordingly, Ms. Russell intends to request a grant of certiorari coupled with a hold pending resolution of *Cox*.

A second issue is that the lower court’s decision conflicts with this Court’s decision in *Unitherm Food Systems, Inc. v. Swift-Echrich, Inc.*, 546 U.S. 394, 405 (2006), and other court of appeals decisions applying that precedent. Namely, in contravention of *Unitherm*, the Ninth Circuit reviewed the sufficiency of the evidence—and reversed the district court’s judgment in relevant part—by purporting to review the district court’s denial of a Rule 50(a) motion. *Unitherm* is clear that an appellant “may not challenge the sufficiency of the evidence on appeal on the basis of the District Court’s denial of its Rule 50(a) motion.” *Id.* (As the Ninth Circuit recognized, the court of appeals did not have authority to review, and did not purport to reverse based on, the denial of Walmart’s Rule 50(b) motion because Walmart never appealed that denial.)

Another reason that Ms. Russell intends to seek certiorari is that the lower court’s decision conflicts with this Court’s decision in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1896), and the Ninth Circuit’s own decision in *Unicolors, Inc. v. Urban Outfitters, Inc.*, 853 F.3d 980, 984 (9th Cir. 2017). As noted by the dissent, the majority improperly reweighed evidence and made fact and credibility determinations.

### **Reasons for Granting an Extension of Time**

Good cause supports a 60-day extension. Since the lower court’s denial of rehearing, Ms. Russell’s counsel have handled an unusually heavy caseload, including a large multi-district action and two other matters approaching trial, leaving insufficient time to properly prepare the petition. Additionally since that time, the Thanksgiving, Chanukah, Christmas, and New Year’s holidays took place.

Furthermore, Ms. Russell's counsel is in the process of affiliating with co-counsel who is more experienced in handling Supreme Court practice.

In addition, the multiple reasons that Ms. Russell intends to present for granting a writ require additional time in preparing the petition.

Accordingly, Ms. Russell respectfully requests an order extending the deadline to file her petition for a writ of certiorari. As noted, respondents do not oppose this request.

### **Conclusion**

Applicant therefore requests that the time to file her petition for a writ of certiorari be extended 60 days, to and including March 23, 2026.

Dated: January 9, 2026

s/ Bruce D. Kuyper

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## CERTIFICATE OF SERVICE

A copy of this application was served by email and through the United States Postal Service by first-class mail on January 9, 2026 to the counsel listed below, in accordance with Supreme Court Rule 22.2 and 29.3:

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Dated: January 9, 2026

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