App No. _____

IN THE SUPREME COURT OF THE UNITED STATES

BINYOMIN RUTSTEIN,

Petitioner,

COMPULIFE SOFTWARE, INC.,

Respondent,

PETITIONER'S APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

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To the Honorable Clarence Thomas, as Circuit Justice for the United States Court of Appeals for the Eleventh Circuit:

Pursuant to Supreme Court Rules 13.5, 22, 30.2, and 30.3, Petitioner, Binyomin Rutstein, respectfully requests that the time to file a Petition for a Writ of Certiorari in this matter be extended for 45 days, up to and including December 16, 2024. The Eleventh Circuit issued its judgment on August 1, 2024, a true and correct copy of which is attached to this Application as Exhibit A. Without an extension, the time to petition for a Writ of Certiorari will expire on October 30, 2024. Petitioner is filing this Application more than ten days before the deadline in compliance with Supreme Court Rule 13.5. *See* S. Ct. R. 13.5. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

Background

This case involves sophisticated and complex intellectual property issues concerning software technology, trade secrets, and copyright law. As the Eleventh Circuit observed in a prior opinion that preceded the instant decision: "There's nothing easy about this case. The facts are complicated, and the governing law is tangled." *Compulife Software, Inc. v. Newman*, 959 F.3d 1288, 1295 (11th Cir. 2020).[1]

In short, Compulife makes life insurance comparison and quotation software.

[1] In its 2020 decision, the Eleventh Circuit remanded to the district court with instructions to make additional findings on Compulife's claims for copyright infringement and misappropriation of trade secrets. *See Compulife Software*, 959 F.3d at 1318 (affirming the judgment in favor of Petitioner on other claims). Following a second bench trial, the Magistrate Judge Bruce E. Reinhart, sitting by agreement of the parties, rendered judgment in favor of Compulife on its claims for misappropriation of trade secrets and judgment in favor of Petitioner on the copyright infringement claim. A true and correct copy of the district court's findings of fact and conclusions of law is attached to this Application as Exhibit B. All parties appealed. The result of that second appeal is the subject of Petitioner's to-be-filed Petition.

The software relies on a database, which consists of a factual compilation of insurance rates, as the raw material to generate insurance quotes. While Compulife sold its software for a fee, it also at the same time maintained a website through which a person could access and pull insurance quotes from the same database, with no requirements for pre-use registration or limitations on the number of quotes one could pull. The district court held that the vast majority of the source code copied at issue is not protectable, which was affirmed by the Eleventh Circuit.

As to the misappropriation of trade secrets claims, Compulife alleged that Petitioner violated the Federal Defend Trade Secrets Act,18 U.S.C. § 1836, and the Florida Uniform Trade Secrets Act, FLA. STAT. § 688.002, by acquiring portions of Compulife's insurance quotes from its database through a technique called "web scraping." As explained by the Eleventh Circuit, web scraping is simply a technique for extracting large amounts of data from a website. *Compulife Software*, 959 F.3d at 1299. In this matter, a single internet protocol sent over 800,000 requests to Compulife's website over a four-day period. Each request used the parameters in Compulife's source code while incrementing the corresponding variables one at a time, to obtain quotes from Compulife's database.

The district court held that the scraping at issue constituted an improper means to acquire trade secrets under 18 U.S.C. § 1836 and FLA. STAT. § 688.002. The district court's decision was primarily predicated on the Eleventh Circuit's observation in its opinion on the first appeal in May 2020:

> [a]lthough Compulife has plainly given the world implicit permission to access as many quotes as is humanly

> possible, a robot can collect more quotes than any human practicably could. So, while manually accessing quotes from Compulife's database is unlikely ever to constitute improper means, using a bot to collect an otherwise infeasible amount of data may well be . . . .

Exhibit B, at 40 (alterations in original) (quoting *Compulife Software Inc.*, 959 F.3d at 1314)). The Eleventh Circuit approved this reasoning in affirming the district court's decision. *See* Exhibit A, at 18-24.

As to Compulife's copyright infringement claims, the district court entered judgment in favor of Petitioner, finding that most of the variables and parameters copied by Petitioner are not protectable for actionable copying. *See* Exhibit B, at 30 ("Defendants succeeded in proving that the majority of the program's copied elements are unprotectable."). But the Eleventh Circuit also held that the district court erred by failing to consider the copyrightability of Compulife's arrangement of its source code as a whole. Because of that error, the Eleventh Circuit reversed and remanded for the district court to determine whether the arrangement of Compulife's code is protectable. *See* Exhibit A, at 14.

While the Eleventh Circuit remanded as to the copyright claims, the Eleventh Circuit's decision brings a final resolution to the scraping issue. Further determinations on the copyright claims should have no material impact on the scraping issue. Thus, no further judicial labor remains to be completed below on the scraping issue, and Petitioner intends to petition this Court for a writ of certiorari.

Reasons for Granting an Extension of Time

This case presents a substantial and important question of federal law: whether the practice of scraping information that is publicly available constitutes an improper means to acquire trade secrets under the Defend Trade Secrets Act. This issue has not been, but should be, settled by this Court, as the Eleventh Circuit's decision is likely to lead to inconsistent, arbitrary outcomes among the district courts. The Eleventh Circuit acknowledged that "scraping and related technologies (like crawling) may be *perfectly legitimate*. Much of the modern internet is built on those technologies." Exhibit A, at 23 (emphasis in original). But it affirmed the district court's judgment on Compulife's misappropriation of trade secrets claims against Petitioner because no human could manually scrape as much data as a bot.

The line for liability should not be drawn based on what a human could practicably achieve on his or her own. Such a line is extremely difficult, if not impossible, to define. Particularly given the increasingly integral role of artificial intelligence technology in people's daily lives, clarification from this Court will be needed.

Petitioner recognizes that this Court has denied petitions for writs of certiorari following a circuit court's remand for further findings on grounds that a final decision on the issue presented had yet to be made. *See, e.g., Mount Soledad Mem'l Ass'n v. Trunk*, 567 U.S. 944, 132 S. Ct. 2535, 183 L. Ed. 2d 692 (2012); *Brotherhood of Locomotive Firemen & Enginemen v. Bangor & A.R. Co.*, 389 U.S. 327, 88 S. Ct. 437, 19 L. Ed. 2d 560 (1967). At the same time, the Court has indicated that this is not a

matter of jurisdiction but one of discretion. *See Va. Military Inst. v. United States*, 508 U.S. 946, 113 S. Ct. 2431, 124 L. Ed. 2d 651 (1993). Because the Eleventh Circuit's decision on the scraping question is final, Petitioner would show that this Court should make an exception to the foregoing cases and grant a writ of certiorari solely on that question.

As to good cause for the specific relief sought by this Motion, Petitioner's counsel requires additional time to ensure that the relevant issues are fully and adequately presented to this Court. Notably, counsel for Petitioner, Mr. Brant C. Hadaway, was not involved in the litigation below and has only recently joined this matter. It will take considerable time for Mr. Hadaway to familiarize himself with the substantial record and prepare a concise petition of maximum helpfulness to the Court.

In addition, counsel for Petitioner have numerous litigation deadlines in the weeks leading up to and immediately following the current deadline:

- A trial scheduled for November 2024 in the matter *Renteria, et al. v. Padron, et al.*, pending before the Complex Business Litigation Division of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case Number 2022-012692-CA-01.

- Multiple pre-trial legal briefs due from October to December 5, 2024, in the matter *Law Offices of Ron S. Da Silva, P.A.* v. *Auckland Holdings, LLC*, pending before the United States District Court for the Southern District of Florida, Case Number 1:23-cv-21147-LEIBOWITZ/Torres.

- A complaint in the United States District Court for the District of Utah, due in October 2024;

- Counsel of record further oversees briefing by approximately 15 attorneys in dozens of lawsuits pending in federal and state courts nationwide.

These and other commitments will limit counsel's availability to work on this matter between today and October 30, 2024.

Conclusion

For the foregoing reasons, Petitioner respectfully requests that the time to file a Petition for a Writ of Certiorari in this matter be extended 45 days, up to and including December 16, 2024.[2]

Dated: October 14, 2024.

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[2] The 45th calendar day falls on Saturday, December 14, 2024. Petitioner thus asks that the deadline be set for the next business day, which is Monday, December 16, 2024.

CERTIFICATE OF SERVICE

A copy of this Application was served by electronic mail and U.S. mail to counsel listed below in accordance Supreme Court Rule 22.2 and 29.3:

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