

No: 21-7790

IN THE

Supreme Court of the United States

"In re Gina Russomanno,"

Petitioner

~against~

Sunovion Pharmaceuticals, Inc., and IQVIA Inc.

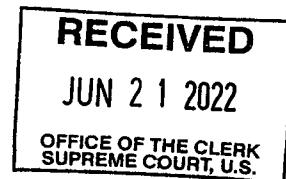
Respondent(s)

**On Petition for Extraordinary Writ
to the United States District Court for the Third
Circuit District of New Jersey**

**SUPPLEMENTAL BRIEF IN SUPPORT TO PETITION
FOR EXTRAORDINARY WRIT OF MANDAMUS**

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QUESTIONS FOR REVIEW

1. **Whether**, the Supreme Court will compel Chief Judge Freda L. Wolfson, U.S.D.J for the Third Circuit to perform the ministerial action she refused, but was required by law to do upon a Rule 12(b)(6) Dismissal (writs of mandamus), for Russomanno-I, [Case No. 3:19-05945]; **Wherein**, arising *new and discrete evidence claims*; and **Whereby**, followed the incorrect dismissal for subsequent, *separate cause of action*, Russomanno-II, [Case No. 3:20-cv-12336], by incorrect res judicata (as result).

2. **Whether**, the Supreme Court will *require* the lower district court to immediately *hold a hearing to provide (mandatory) curative remedy* for [Russomanno I], and thereby, follow to overturn ORDER by the same district court which incorrectly dismissed subsequent, *separate cause of action* [Russomanno-II], by res judicata.

i.

LIST OF PARTIES

- *Chief Freda L. Wolfson*, U.S.D.J (3rd Cir.), Respondent
- *Gina Russomanno*, Petitioner
- *Sunovion Pharmaceuticals, Inc.*, Respondent
- *IQVIA Inc.*, Respondent
- *Dan Dugan, Jenna Yackish, Trevor Voltz, Erik Weeden, and Sunovion Pharmaceuticals Inc.*, Respondants

RELATED CASES:

- *Gina Russomanno v. Sunovion Pharmaceuticals, and IQVIA Inc.*: Case # 3:19-cv-05945, United States District Court NJ
- *Gina Russomanno v. Dan Dugan, Jenna Yackish, Trevor Voltz, Erik Weeden, and Sunovion Pharmaceuticals Inc.*: Case # 3:20-cv-12336, United States District Court NJ
- Case # 21-2004, United States Court of Appeals 3rdCir [*Russomanno II*]; No. 3:20-cv-12336.

- Case # 21-787 United States Supreme Court,
Certiorari/ Rehearing: [Russomanno II; No. 3:20-cv-
12336.

CORPORATE DISCLOSURE, RULE 29.6

Gina Russomanno, is a personal entity with no corporation
or LLC established under name or control.

iii.

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STATEMENT OF CASE

Petitioner files this Supplemental Brief in relevant support of Petitioners Extraordinary Writ of Mandamus, filed May 2, 2022, pursuant to *intervening information* from recent mandamus-granted case “*In Re Apple, Inc.*.”

In light of new information from the *United States Court of Appeals for the Federal Circuit*, “*In Re Apple, Inc.*,” [Case 2022-137], whereby, mandamus was ORDER granted on May 26, 2022; wherein, the **denial** of Apple Inc.’s motion was vacated and the case was transferred for continuance. The Court **ruled** the following:

“*In re Apple Inc.*, 979 F.3d 1332, 1345 (Fed. Cir. 2020) (quoting *In re Acer Am. Corp.*, 626 F.3d 1252, 1256 (Fed. Cir. 2010)) (emphasis in Apple)). Nothing in the court’s opinion or the record offers any indication that Apple’s in-district offices had any involvement in the research, design, or development of the accused technology. The court’s reliance on these offices, which lack such a connection to the

locus of the events giving rise to the dispute, amounts to a clear abuse of discretion.”

In following this ruling, the Court’s “opinion and record” must “offer indication” on “decision rule reasoning.”

In as much as, Petitioner sets forth U.S.D.J Chief Official Freda L. Wolfson, for the NJ Third Circuit, did not offer any indication in either “opinion or record” for *Russomanno I*, [Case No. 3:19-cv-05945], which expresses her reasoning for withholding mandamus curative remedy on a Rule 12(b)(6) Dismissal.

Nowhere in ‘record or opinion’ does Judge Wolfson cite or express *reasons* how the uniform dismissal, of a prior-pending motion for jurisdiction reconsideration and an after-filed Rule 12(b)(6) dismissal connects to thereby, quash all new and discrete arising evidence without proper mandamus for providing curative remedy.

In as much as, “In Re Apple Inc.,” the Court’s “reliance on the jurisdiction remand” as a means to fastidiously

dispose of new arising evidence claims, before plaintiff could leave to amend, (for the new evidence claims), is *relative* “clear abuse of discretion.”

Petitioner brought the new arising claims to Court’s attention through *material testimony* in Petitioners Opposition to Dismiss, entered during the pending remand reconsideration.

Petitioner herein, addresses the clear abuse of discretion and miscarriage of justice by Chief Judge Wolfson’s *uniform dismissal* of plaintiff’s *jurisdiction remand* within the *Rule 12(b)(6) dismissal*, absent *mandamus law action* to *provide curative remedy* upon a *Rule 12(b)(6) dismissal* for new-arising evidence.

ARGUMENT

I. Case Opinion Statements [3:19-cv-05945].

Nowhere in the 23-page opinion of approx. 7588 words, from decision to [Case No. 3:19-cv-05945], “Gina Russomanno v. Sunovion Pharmaceuticals, Inc. and IQVIA,

Inc.,” (Opinion and Order, Dkt 61 & 62), is there any “decision statements” found on the ministerial action law that ‘amendment would be futile.’ [Phillips].

The ‘opinion and record’ omits this mandamus law because Chief Judge, Freda L. Wolfson refused ministerial action to provide curative remedy for new and discrete arising evidence in discrimination claim, relying on a pending jurisdiction remand in uniform dismissal with a Rule 12(b)(6) dismissal.

In as much as, “In Re Apple Inc.,” “Nothing in the court’s ‘opinion or the record’ offers any indication (reason explanation)... “The courts reliance on events (jurisdiction) lacks connection to events (new evidence) giving rise to the dispute.”

Notably however, the mandamus law for a Rule 12(b)(6) Dismissal, “to provide curative remedy,” ‘unless amendment would be futile,’ was in fact noted and found in Wolfson’s opinion for ‘subsequent decision’ to Russomanno II

[Case No. 3:20-cv-12336], and also for Appeals [Case No. 21-2004]. *See:* (Pet. Extraordinary Writ Mandamus) @ App. 35, and App. 46.

Furthermore, Chief Judge Freda L. Wolfson's Opinion goes on to *outline when a judgment may be altered or amended* (law applicable in reconsiderations, to appeals, to certiorari or to extraordinary mandamus).

Opinion *Russomanno I* states, (Pet. Extra. Writ Mandamus), @ App. 6:

“Indeed, requests seeking reconsideration “are not to be used as an opportunity to relitigate the case; rather, they may be used only to correct manifest errors of law or fact or to present newly discovered evidence.” *Blystone v. Horn*, 664 F.3d 397, 415 (3d Cir. 2011) (citing *Howard Hess Dental Labs., Inc. v. Dentsply Int'l Inc.*, 602 F.3d 237, 251 (3d Cir. 2010)); see also *N. River Ins. Co. v. CIGNA Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir. 1995).

A “judgment may be altered or amended [only] if the party seeking reconsideration shows at least one of the following grounds: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion for summary judgment; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice.” Blystone, 664 F.3d at 415 (quotations omitted).

Significant to note, at the time of filing the Remand Reconsideration, Petitioner had not yet become aware of the new arising evidence claims for discrimination until later entered in Defendant’s motion to dismiss filed after the Remand Reconsideration.

Additionally, Judge Wolfson’s Opinion speaks to Standard of Review, (Pet. Extra. Writ Mandamus), @ App. 10:

“In reviewing a dismissal motion (Rule 12(b)(6)), courts “accept all factual allegations as true, construe the

complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief.” *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008) (citation and quotations omitted).”

“However, Rule 12(b)(6) only requires a “short and plain statement of the claim showing that the pleader is entitled to relief” in order to “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Twombly*, 550 U.S. at 555. The complaint must include “enough factual matter (taken as true) to suggest the required element. This does not impose a probability requirement at the pleading stage, but instead simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of the necessary element.”

Phillips, 515 F.3d at 234 (citation and quotations omitted); Covington v. Int’l Ass’n of Approved Basketball Officials, 710 F.3d 114, 118 (3d Cir. 2013) (“[A] *claimant does not have to set out in detail the facts upon which he bases his claim*. The

pleading standard is *not akin to a probability requirement*; to survive a motion to dismiss, a complaint merely *has to state a plausible claim for relief.*”) (quotations and citations omitted).”

In all the above opinion citations, Chief Judge Freda L. Wolfson demonstrates the standard for review.

Thereby, plaintiff petitioner must be provided same standard regarding her Opposition to Dismiss statements wherein, she provides material statements to new arising determinative evidence in discrimination (for a subsequent claim by mandatory provision for curative remedy).

Additionally, Chief Judge Freda L. Wolfson goes on to state **Footnote 5** (Pet. Writ Mandamus), @ App. 11:

“In her opposition brief, Plaintiff confirms that her wrongful termination claim is pled in contract, not tort. Plaintiff’s Opp., at 1 (“Plaintiff entered original complaint for wrongful termination by Covenant of Good Faith (and Fair Dealing) Exception as per New Jersey state law.”). In addition, on the “Civil Case Information Statement” that accompanies her Complaint, Plaintiff identifies this action as arising under common law, as opposed to the “Conscientious Employees Protection Act” or Law Against

Discrimination LAD.” See Notice of Removal, Exhibit A.

Therein, Chief Judge Freda Wolfson herself, spells out that Petitioners First Case Claim was contract not tort, and not of any Discrimination Protection Act or LAD statutes.

In as much as, In Re Apple Inc., Chief Judge Freda Wolfson acts in a ‘*clear abuse of discretion*’ when relying on a ‘*jurisdiction remand*’ in a single opinion with a Rule 12(b)(6) dismissal in order to dispose of new evidence claims arising during the pending jurisdiction remand in [*Russomanno I*].

Additionally, Chief Judge Freda Wolfson specifically notes in that opinion that plaintiffs first case was strictly ‘one, *maybe two*’ causes of action that were ‘only in contract law’ and not in “discrimination law cause of action,” (Pet. Writ of Mandamus) @ App. 12:

“At the outset, I cannot discern whether Plaintiff has alleged two separate causes of action in the Complaint. Indeed, Plaintiff appears to assert a *wrongful termination claim*, because, according to her,

she was discharged from Sunovion without just cause. *In addition*, as a separate and independent basis, Plaintiff seems to allege that Sunovion breached the *covenant of good faith and fair dealing* by fabricating a basis for her termination. Nevertheless, even if the Court, *out of an abundance of caution, construed* Plaintiff's Complaint to *plead two different causes of action*, both claims fail for the same reason—she has not alleged the existence of an express or implied contractual obligation that Sunovion violated.”

Thus, Judge Wolfson was *acutely aware* that plaintiff's complaint was not in discrimination, (until later arising, after the jurisdiction remand reconsideration filing, and addressed by plaintiff testimony via opposition to dismiss).

Judge Wolfson *elaborates even further* at **Footnote 6**, (Pet. Writ Mandamus), @ **App. 12:**

“For purposes of completeness, I note that there are certain legislative and judicial exceptions to the at-will rule, neither of which Plaintiff has alleged here. For example, an employer cannot discharge “a worker for a discriminatory reason.” Witkowski, 136 N.J. at 398 (citing N.J.S.A. 10:5-1 to -28). In addition, “an employer may not fire an employee if the ‘discharge is contrary to a clear mandate of public policy[.]” Id.

(quoting *Pierce v. Ortho Pharmaceutical Corp.*, 84 N.J. 58, 73 (1980)); see also *Pierce*, 84 N.J. at 73 (“[E]mployers will know that unless they act contrary to public policy, they may discharge employees at will for any reason.”).”

Judge Wolfson clearly outlines that Plaintiff did not allege any discrimination statutes in her first complaint. *Thereby*, “discrimination” was “not a cause of action” in the first Russomanno case. Judge Wolfson also clearly outlines that an employer cannot terminate or discharge an employee for discriminatory reasons.

Despite that plaintiff did give testimony in her Opposition to Dismiss, to subsequent claims for discrimination upon *new and discrete arising evidence*, Plaintiff could not have addressed these claims or amended the Complaint.

*In as much as, In re Apple, Inc., the “Courts reliance” on the disposition of the Jurisdiction Remand Reconsideration (in uniform dismissal) with a Rule 12(b)(6) dismissal for *Russomanno I* was a ‘clear abuse of discretion;’*

whereby, Judge Official Freda Wolfson withheld mandatory (mandamus) curative remedy for new arising claims . See: (Pet. Writ Mandamus), (opinion and order), @App. 1-24.

II. Case Opinion Statements [3:20-cv-12336].

*Moving to the Opinion decision for *Russomanno II*, (May 4, 2021). See: Petition for Extraordinary Writ of Mandamus, @ App. 25-35.*

The subsequent case was dismissed based on claim preclusion by res judicata. Judge Wolfson's opinion analysis states the following, (Pet. for Writ Mandamus), @ App. 29:

“Claim preclusion gives a judgment “preclusive effect” by foreclosing litigation of matters that should have been raised in an earlier suit.” *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 77 n. 1 (1984).”

‘A party seeking to invoke claim preclusion must establish three elements: “(1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same cause of action.” *Strunk v. Wells Fargo Bank*, N.A., 614 F. App’x. 586, 588 (3d Cir. 2015) (quoting *Lubrizol Corp. v. Exxon Corp.*, 929 F.2d 960, 963 (3d Cir. 1991)). The Third Circuit has advised that this test should not be applied “mechanically” and instead, courts should “focus on the central purpose of the

doctrine, to require a plaintiff to present all claims arising out [of] the same occurrence in a single suit.” Sheridan v. NGK Metals Corp., 609 F.3d 239, 260 (3d Cir. 2010) (quoting Churchill v. Star Enterprises, 183 F.3d 184, 194 (3d Cir. 1999)). Requiring plaintiffs to present all claims arising out of the same occurrence in a single suit is designed to “avoid piecemeal litigation and conserve judicial resources.” Id. at 260.”

Thereby, Judge Wolfson’s mandamus refusal to provide curative remedy upon Rule 12(b)(6) dismissal thereto, foreclose on litigation matters which were appropriately and timely brought during the first suit, (upon testimony to “new arising discrete evidence”) is a manifest injustice, and “clear abuse of discretion” which did not serve to ‘conserve judicial resources’ or ‘aid appellate jurisdiction.’

Additionally, per all above statements from Opinion, Russomanno I, the (3) claim preclusion elements were unmet. The *third element is overturned* because the subsequent suit Russomanno II was not based on the same cause of action. Judge Wolfson’s Opinion statements for Russomanno I, noted only ‘contract law causes of action’ and

distinctly noted that “No discrimination causes action were alleged.” Thereby, claim preclusion is unmet and *Russomanno II* should be granted to proceed accordingly.

Accordingly, per mandamus law and ministerial action, Petitioner’s discrimination claims for new arising evidence in *Russomanno I* should be *granted by appropriate curative remedy* and right to proceed thereby vacating subsequent dismissal for *Russomanno II*.

LOWER COURT JURISDICTION STATEMENT

The District Court has original jurisdiction pursuant to 28 U.S.C. § 1331, under Title VII, ADEA and Equal Pay Act claims, and supplemental jurisdiction for State claims, NJLAD, under 28 U.S.C. § 1337(a).

CONCLUSION:

Petitioner requests U.S. Supreme Court to Grant Extraordinary Writ of Mandamus to correct this manifest miscarriage of justice; Whereby, ministerial action, refused by Chief Judge Freda L. Wolfson by her inaction to provide

curative remedy upon Rule 12(b)(6) Dismissal for case
[Russomanno-I], thus, has no recourse for remedy; and
Wherein, such action lead to the ‘subsequent, incorrect res
judicata dismissal’ for ‘separate cause of action,’
[Russomanno-II], which therein, has no other remedy.

The Supreme Court should immediately issue writ of mandamus to require the lower district court to hold a
hearing within 30 days to provide curative remedy for
[Russomanno I], and thereby, Vacate ORDER which
incorrectly dismissed subsequent, ‘separate cause of action’,
[Russomanno-II], by incorrect res judicata; both dismissed by
same Chief Judge Freda L. Wolfson, and District Court of
New Jersey.

It is respectfully requested this petition for writ of mandamus should be **GRANTED**.

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and correct.

Respectfully Submitted,

/s/ Gina Russomanno

Date: June 16, 2022



*Notary Public, State of New Jersey;
Commission: #50148307; expires 1/14/2026
Gina Russomanno*

