11/22/21
MD

No: 21-787

IN THE

Supreme Court of the United States

Gina Russomanno,

Petitioner

~against~

Dan Dugan, Jenna Yackish, Trevor Voltz, Erik Weeden, and Sunovion Pharmaceuticals, Inc.

Respondent(s)

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

Gina Russomanno
Pro Se Petitioner
95 Ward Avenue
Rumson, NJ 07760

732-841-4647
Grusso777@comcast.net

QUESTIONS FOR REVIEW:

1. Whether the Supreme Court will consider the merits of the decision of the U.S. Court of Appeals for the Third District, pursuant to res judicata, barring anti-discrimination claims, when such decision contradicts with the petitioners "*express allegations,*" and directly conflicts with relevant precedent.

2. Whether a simultaneous dismissal for a "remand" reconsideration **juxtaposed** as a "judgement" reconsideration within a single '*uniform-decision*' with a motion to dismiss can *completely foreclose* all rights to *due process* in *new-evidence*, and serve to later *justify* the barring of subsequent claim (by res judicata).

3. Whether proper precedent establishes that when new and discrete evidence information arises from a prior case it permits judicial *right to proceed* and provision for *timely leave to reinstate*. Whether *reasonable amendment* would be *futile* when the court *withholds* leave to reinstate, *quashes all* due process, and *completely forecloses* on *new evidence* claims.

4. Whether res judicata same-claim preclusion can bar discrimination claims in Title VII, ADEA, and Equal Pay Act and NJLAD and Diane B. Allen Equal Pay Act when the two cases *do not duplicate* in *any discrimination statutes* either federal or state by *any* (reiteration, simultaneous, additional, or 'same-claim') *overlap* and are *wholly separate* in *cause of action*.

5. Whether "**assumptions**" that are "**absent any elaboration**" (as defined by previous courts) can still support reasoning decision to determine that discrimination "must have been prior known." Whether precedent governs that the *merits* of "*material fact*" are adjudicated on "**determinative**" claim.

6. Whether precedent for '*essential similar*' is '*not assumptive,*' but *relevant* to '*expressly asserted,*' ***material of fact***. Whether same-claim preclusion is eliminated when the ***nucleus of allegations*** in both suits is substantially different and the subject of the allegations are mutually exclusive.

7. Whether federal jurisdiction for NJ state law (NJLAD), honors precedent to hold individual defendants liable and exclude 'same-parties' preclusion. Whether same-parties preclusion is justified when it *extends from* 'same-claim' preclusion that *conflicts* with relevant precedent.

8. Whether precedent for same-parties establishes that "*determinative factors*" for individual defendant parties must be applied by "material fact." Whether court's failure to apply '*determinative factors*' can justify the preclusion of individual defendants.

9. Whether there is strong court prejudice surrounding every aspect of plaintiff's cases. Whether precedent establishes proper, just treatment and judicial fairness to pro se parties. Whether it is widely held that plaintiff parties are entitled to the court's assumption of trust, and whether plaintiff testimony should be construed liberally especially for pro se litigants.

LIST OF PARTIES AND RELATED CASES

- *Gina Russomanno* v. *Dan Dugan, Jenna Yackish, Trevor Voltz, Erik Weeden, and Sunovion Pharmaceuticals Inc.*, Case No. 21-2004, United States Court of Appeals for the Third Circuit. Judgement entered Oct. 15, 2021.
- *Gina Russomanno* v. *Dan Dugan, Jenna Yackish, Trevor Voltz, Erik Weeden, and Sunovion Pharmaceuticals Inc.*, Case No 3:20-cv-12336, United States District Court of New Jersey. Judgement entered May 4, 2021. (*Origin*: MON-L- 002421-20).
- *Gina Russomanno* v. *Sunovion Pharmaceuticals, and IQVIA Inc.* Case No 3:19-cv-05945, United States District Court of New Jersey. Judgement entered May 18, 2020. (*Origin*: MON-L- 00017619).

CORPORATE DISCLOSURE, RULE 29.6

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

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari is issued to review the judgements below and so requiring the entire record be sent up for decision of the entire matter in controversy.

OPINIONS BELOW

1. The opinion and order for of the United States *Court of Appeals* for the Third Circuit for plaintiffs **rehearing en banc** appears at Appendix **A** to the petition and is reported at Case No. 21-2004, [Dkt. 29, 30]. Judgement entered Oct. 15, 2021.

2. The opinion and order for of the United States *Court of Appeals* for the Third Circuit for plaintiff **formal appeal** brief appears at Appendix **B** to the petition and is reported at Case No. 21-2004, [Dkt. 26, 27]. Judgement entered Sept. 8, 2021.

3. The opinion and order for of the United States *District Court* for the Third Circuit for ***Russomanno II*** appears at Appendix **C** to the petition and is reported at Case No:

3:20-cv-12[illegible]3, [Dkt. No. 49, 50]. Judgement e[illegible]ed May 4, 2021.

4. The opinion and order for of the United States *District Court* for the Third Circuit for ***Russomanno I*** appears at Appendix **D** to the petition and is reported at Case No 3:19-cv-05945, [Dkt. No. 61, 62]. Judgement entered May 18, 2020. (Original Case No. MON-L- 00017619)

JURISDICTION

The date on which the United States Court of Appeals for the Third Circuit *denied* my rehearing was October 15, 2021.

A timely petition for rehearing was *entered* on the following date: September 21, 2021, and a copy of the order denying rehearing appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS:

This case involves the following constitutional and statutory provisions:

Title VII: 42 U.S.C. § 2000e, 2000e-2; **ADEA**: 29 U.S.C § 621; **Equal Pay Act**: 29 U.S.C § 621; **NJLAD** and **NJ Diane B. Allen Equal Pay**: *N.J.S.A.*§10:5-12(a), *N.J.S.A.*§10:5-12(e), N.J.S.A § 10:5-12(t), N.J. Rev. Stat. § 10:5-13.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

Cases:

New Jersey Statutes:

STATEMENT OF THE CASE

The Supreme Court is being called upon for Writ of Certiorari to review the character reasons for decision by the U.S. Court of Appeals for the Third Circuit. The courts have departed from the usual course of judicial proceedings, deciding important federal question in conflict with relevant precedent thus, calling for the Supreme Court's supervisory power.

The Appeals court affirmed the District court decision in conflict to *relevant* precedent and further denied plaintiff panel rehearing and en banc rehearing. This case, *Russomanno II*, has been improperly barred by res judicata which cannot be righteously justified.

The following precedent cited by court opinion in *res judicata* decision are 'contrary' to the '*Russomanno*' cases [*R-I*; *R-II*], and thereby, conflict with the '*relevant*' precedent:

Harding v. Duquesne, this case was barred because of *duplicity* in discrimination statutes; [district opinion, 10],

[appellant's brief, 5]. *Sheridan*, *Athlone*, (and *Lizol*) do not support '*essential similarity*' (of underlying events giving rise to the various legal claims) *because* their precedent is overturned in *direct conflict* to *L-Tee Electronics Corp.*, and *Elkadrawy*; [*Mullarkey*],where the *relevant* precedent *supports* that fraudulently concealed information, and new and discrete discriminatory events "**prevent**" res judicata; [appeals opinion, 7, 8], (notably, *Elkadrawy* was *duplicative* of discrimination statutes, but barred by res judicata for *untimely* (90-day) *mandate* to reinstate action). Additionally, *Brzostowski* was also barred by res judicata because of *untimely mandate* to *reinstate* action (and *also duplicative* of discrimination statutes); [appeals opinion,6]. *L-Tee Corp.* was barred by res judicata because *corporation status had lapsed* (thereby, the defendants could not be held liable); [appeals opinion, 6). *Cieskowska* was *also* barred for res judicata by *duplicative* discrimination statutes; [appeals opinion, 6]. *Gambocz* was claim upon *de minimis* merit, 'where the 'operative facts' where *judged* "**identical**,"(unlike

petitioners cases, *judged*, 'not identical'); [appeals opinion, 8],[district opinion, 9, *R-II*]. Both, *Tarr and Failla*, were barred by "individual determinative factors," for liability (whereas, in the petitioner's case, "*determinative factors*" were *never* applied); [appeals opinion, 9, ft.6], [appellant brief, 9-11]. *Blystone* speaks to a judgement reconsideration (on *judgement* death sentencing), and not a (jurisdictional) remand reconsideration (as in plaintiff's case); [district opinion,6, *R-II*]. *Bennun* ***was not barred*** and held ***no duplicity*** in claim, but court denies **'own'** [*Kozyra*] precedent wherein, the 'entire controversy doctrine is a "broad one" and "*more preclusive than*" res judicata,' (calling petitioners "transitive logic; questionable"); [appeals opinion, 6, ft.5]; [*See*: *specifically*, appellant brief, 14], [*Kozyra*], [Bennun]. *Twombly*; *Ashcroft*; *Phillips*; *Sonnier*, support that plaintiff is entitled to courts '*assumption of trust*.'

Thus, the court's reasoning on precedent conflicts with the '*relevant*' precedent. These same cases instead, also set precedent which recognize 'exemption to res judicata'

where 'new and discrete evidence' was 'fraudulently concealed;'[*Elkadrawy; L-Tee Corp.*], [appeals opinion, 7]. The other cases also *conflict with precedent* because those cases *hold duplicity in statutes, untimely mandates,* and *corporation lapse, unlike* the *Russomanno* cases; [appeals opinion,7].

Whereas, *Russomanno I and Russomanno II* hold '*no duplicity* in *statutes;*' Whereas, the case did not fail to adhere to any *time mandates* for leave to reinstate appropriate action (whereby, *righteous proffer* for leave to reinstate was *conspicuously* **withheld** by the district court upon dismissal to *Russomanno I*); Whereas, plaintiff is entitled to *due process* for *subsequent* claim upon *new evidence and fraudulently concealed information;* Wherein, a *remand reconsideration* dismissal cannot serve to '**juxtapose**' as a *judgement reconsideration* and thereby, then justify to *completely foreclose* all further claims (upon two, *simultaneous,* same-day, combined-opinion, *dismissals* with a remand reconsideration within the motion to

dismiss... (…en, that dismissal action also wit…ld *righteous proffer* for 'leave to reinstate' action)); Whereas, plaintiff's two claims were *judged, 'not identical;'* Whereas, court *never applied* any *individual "determinative factors"* for defendant liability in plaintiff case; Whereas the court *decidedly denies precedent* that entire controversy doctrine is "*more preclusive than res judicata*" which excludes case from 'same-claim' preclusion, allowing case to righteously prevail; [*Kozyra*], [*Bennun*]; Whereas, Plaintiff is entitled to the courts *assumption of trust* as supported by [*Twombly; Ashcroft; Phillips; Sonnier*] as provided in [appellant formal brief, 23, 24], recaptured from [Pl. opposition, *42-1; R-II*].

Furthermore, *Russomanno I provides testimony* that plaintiff had actually asserted that she was being terminated for **retaliation** (*not discrimination*), and that "many more representatives were being terminated *across the nation.*" Plaintiff's petition now elaborates on all above:

REASONS FOR GRANTING WRIT ARGUMENT

The District Court's opinion stated that "this is not an instance where the allegedly discriminatory conduct giving rise to Plaintiff's claims here, occurred after she filed prior lawsuit;"[district opinion p10], [appellant formal brief p.7].

However, the court *was made aware* that "**new and discrete**" information to "**determinative**" discriminatory evidence action *did arise during Russomanno I.*

"Court interpretation that Plaintiff was already aware that determinative discriminatory conduct had occurred at the time of *Russomanno I* is mis-reviewed." Plaintiff elaborates on this (plaintiff) statement within her appeal brief and outlines both the plaintiff and defendant's testimony to this 'new evidence;' [appellant brief, 6].

Furthermore, *Russomanno I* is "**solely**" an employment breach of contract claim in *cause of action* "*wrongful termination*, without real just cause, by covenant of good faith (and fair dealing) exception. *Russomanno II* is "**solely**" *anti-discrimination* claims.

The court reasoned decision according to *Sheridan; Athlone; and Lubrizol*],[appeals opinion, 5]: "To determine whether both lawsuits are based on the same cause of action, we look not to "the specific legal theory invoked," but to the *essential similarity* of the underlying events giving rise to various legal claims;" [*Sheridan*], [*Lubrizol*]; [appeals opinion,5], [district opinion, 9].

The court (quoting *Athlone* 746 F.2d at 984), "We consider the following factors: (1) whether the acts complained of and demand for relief are the same..., (2) whether the theory of recovery is the same; (3) whether the witnesses and documents necessary at trial are the same...; and (4) whether the *material* facts alleged are the same." Id.

The court cannot apply factors 1 and 2. Per the district court's opinion, "The *claims* in this matter and in *Plaintiff's* prior *case* action '**are not identical**'...;" [district opinion, 9], and "Although *plaintiff's* theory of **recovery** ***is different***...;" [district opinion, 10]; [appellant brief, 12].

The court then conflicts precedent for '*essential similarity*' to '*material facts*' for factors 3 and 4, and *conflicts to reason* the cases regard the 'same wrongful acts,' "they stem from the same set of facts regarding placement on the PIP and eventual termination," [district opinion, 10], and "arise out of the same employment relationship and involve same wrongful acts," [district opinion, 10]; [appeals opinion, 6].

However, throughout decision opinion, the court ***conflicts*** '*same set of facts*' with '*express assertions*' to ***"material"*** *fact. Russomanno I* was wrongful termination *by* PIP separation whereas, *Russomanno II* is discrimination *by* unilateral policy change (not the *result* of PIP termination, but of determinative discrimination, the *result* of new evidence in discriminatory policy change). *Russomanno I* does not discuss any aspect (or knowledge) at all regarding this unilateral policy change. Thereby, the ***nucleus*** *of allegations* is substantially different, and *Russomanno II*

cannot be considered '*essentially similar*' in '*material fact*' for same claim.

Appellants reply brief, extensively explains how this court reasoning *conflicts* with relevant precedent:

> "In the discrimination case, termination is neither '*wrongful act*' nor cause of action, it is '*injury harm*.' The '*Wrongful Acts*' in plaintiffs two cases are drastically different. Plaintiff's PIP as a fact of employment relationship is necessarily understood for either case." (appellant reply, 3). In *Russomanno-I*, the ***sole*** *wrongful act* and ***sole*** *cause of action* was 'Termination in Breach of Contract'. There were '*no simultaneous claims*' for statutory discrimination (neither federal nor state) in that case. This case (*Russomanno-II*) is litigating the '*wrongful act*' of Statutory Discrimination *determinatively arising from* (*Russomanno-I*). There is a clear and obvious legal distinction between the two cases and different '*wrongful act*' claims. In *Russomanno-II*, termination is not '*wrongful act,*' nor cause of action, it's '*injury harm*.' Injury from illegal 'wrongful act' is requirement to plausibly state a claim upon which relief can be granted." [appellant reply, 4].

The fact regarding plaintiffs PIP is **not** an *'essential'* '**material fact**' *to both claims. Russomanno I* asserts material facts to wrongful termination by *company-provided inaccurate sales numbers via (express assertion) 'PIP*

termination. *Russomanno II 'expressly asserts* '*determinative discrimination*' via '***unilateral*** policy change' an '*essential' fact* (*in new evidence*) that was *prior-unknown*, (and *fraudulently concealed*), before filing *Russomanno I*. Additionally, *Russomanno I* was *wholly independent* of any *duplicative statutes* (federal or state) to *Russomanno II*, and discrimination was *never* claimed (or indicated) as '***material fact***' in the prior case.

The court *then* (***inaccurately***) quotes, "Furthermore, Russomanno "*expressly* alleged" in the first lawsuit that the eight-quarter policy had been applied in a discriminatory manner (Suppl. Appx. 151);" [appeals opinion, 7].

This court quoted statement **is invalid and untrue**. That statement was **never** '*expressly alleged*' by the plaintiff and **cannot be found** where the court cites its location, (Suppl. App'x. 151).

Nevertheless, the court *relies solely* on that statement as reason, (after also calling same statement '***assumption***'),

"she (plaintiff) could have brought discriminat[illegible] claims in her first action," (citing *Mullarkey* and *Elkadrawy*); [appeals opinion, 8].

In *greater* conflict, the court proceeds to further quote *Elkadrawy*, "(explaining that allegations of "several new and discrete discriminatory events" **did prevent** application of res judicata);" [*Elkadrawy*, 584 F3d at 174].

The court then decidedly follows to ***revoke*** all precedent to reasonable '***assumption of trust***' for plaintiff's testimony to 'new evidence information' (*deeming* her testimony ***debatable***); [appeals opinion,7]. Thus, (in prejudice), the court again conflicts with precedent; [*Twombly*; *Ashcroft; Phillips; Sonnier*]; [appellants brief, 23-24]; [Pl. opposition to dismiss, p20, Dkt. 42-1; [*R-II*]].

The court continues: "While Russomanno reassessed her *previous assumption* about the scope of the policy, she had not shown that the defendants concealed the nature of

the policy that she investigated with due diligence;" [Suppl. App'x. 151]; [appeals opinion, 7].

Here, the court specifically defines Russomanno's testimony as '*plaintiff assumption;*' thereby, the *court admits* that plaintiff's reference **was not** an **assertion** in **material fact** for "**determinative**" discrimination. Plaintiffs petition for (panel/ en banc) rehearing elaborates:

> "That observed, assumptions are not ripe for application in legal theory or principles of law. Plaintiff could not rightfully bring a claim in anti-discrimination without specific knowledge to '**determinative**' action. Therefore, she could not (and did not) bring discrimination claim under assumption. However, when **new** '*determinative*' **evidence** was presented by defendants in *Russomanno I*, a subsequent claim for anti-discrimination was made righteous;" [rehearing petition, 6]; [appellant reply, 11]; [defendant appellee's brief, 24].

Defendants also discuss this *same* 'assumption' in their Appellee Brief. This is the one-and-only 'reference' by which the courts and the defendants *conclude* is '*significant evidence reason*' that plaintiff had been aware of discrimination claims prior to *Russomanno I*; [appeals

pinion, 8]. Nevertheless, court then *contradicts* the *validity* of their conclusion by calling plaintiffs (*referenced*) testimony an '**assumption**,' [appeals opinion, 7], then both *'further explain'* that the testimony was *actually* '***absent any elaboration***;' [appellee brief, 24]; [district opinion ft.12, p20]; (*See*: below):

Defendant Appellees brief provides the plaintiff's testimony as follows:

> "Plaintiff laments that she was incapable of pleading a claim of discrimination...." Dkt 5, **p.*12** (cont. 13). She avers that she is entitled to Court's assumption of trust". Dkt. 5, **p. 16**." (bold page *correction* added).
>
> "Plaintiff averments as to her purported unawareness are disingenuous." "Plaintiff stated in her *Russomanno I* complaint, *absence any elaboration*, "It has been observed and noted that other representatives have been treated differently based age, sex or race, and, in the past, have been omitted from this supposed 8-consecutive quarter rule." A151; A350. "Plaintiff had some awareness as to this potential discrimination claim prior to filing *Russomanno I*... (emphasis added).
> (petitioner notes...this is the same statement the appeals court defined as '**assumption**').

Both, the defendants and the *district* court reason that the above plaintiff statement was "***absent any***

elaborati By court's own contradiction, th urt '*conflicts with precedent*' when aligning "assumption statement," "absent any elaboration," for *reasoning* <u>*decision*</u> that this 'one-and-only,' plaintiff statement is '***evidence***' in ***"material fact,"*** and **(determinative)** discrimination "must have been prior-known." [appellee brief, 24]; [district opinion ft. 12, p20]; [appeals opinion, 5-6]...[relying on [*Sheridan*]; [*Athlone*]; [*Lubrizol*].

Plaintiff's appeal brief fully outlines her testimony to the '*newly arising evidence*' brought in *Russomanno I* at Summary of Argument, #1:

"Plaintiff testified in her Amended Opposition to Dismiss *Russomanno I,* (Case 3:19-cv-05945) at **[ECF 46],** <u>**Statement of Facts #3**</u> (copied below), that "*new* <u>*(determinative)*</u> *evidence,*" <u>arising</u> from defendant testimony was **act in discrimination** (thereby, cause for subsequent claim).

"*Se[illegible]elow:* [Document 46 Filed 11/04/[illegible]age 6 of 21 PageID: 843], Statement of Facts #3, Case 3:19-cv-05945:"

"[3. In the Motion to Dismiss, Sunovion goes on to state that, "new management (Ms. Yackish) implemented a new policy that team members who did not reach 100% to goal in 8 consecutive quarters would be placed on a PIP." By this statement, Sunovion continues to admit acts of bad faith, understanding that the timeclock for those 8 quarters was implemented retroactively, and as well was based on Sunovion' s knowledge of false data reports...."

* "[Further, Sunovion **now states** this process "only" applied to members of a "single" approx. 8-person team and not "all members of the Nationwide Neurology Sales Team," thus, further creating unfair exercise of discretion (and **discrimination**) toward only "select" representatives employed by Sunovion, or more specifically "just the plaintiff." Plaintiff is well aware that no others on that sales team were placed on a PIP for that time period, or ever terminated [ECT item 33 att. 1 at 2]]." * (emphasis added).

More significant, plaintiff provided testimony in *Russomanno I* that she *believed* the (standard) policy was being '*equitably applied across the company*,' and expected that *numerous reps across the nation* were "*also terminated*" in the *same way* (by inaccurate sales numbers and PIP

termination Plaintiff's testimony in (*Russomanno I*), follows:

> "Plaintiff's termination was NOT a downsizing, but a termination, pointing to the very bad faith of Sunovion on many accounts in attempt around falsity and dodging transparency to shareholders and employees alike to limit public information of facts and best manipulate earnings and profit reports, etc. **It can be assumed that many more representative across the divisions and nation were in fact terminated in this same way.** Potentially, the Neurology division, a small force of approx. 131, was the *main division disguising their portion of employee cuts* **via PIP termination**, especially in consideration of the highly anticipated, company-regarded, blockbuster-like importance on the APL launch; and the significance for this Division on Sunovion's plans to lead the way in the future pharmaceutical Neurology market space." (emphasis added); [*Russomanno I*, compl., p9, item-10...cont'd].

Plaintiff's above testimony provides the court further elaboration, and clearly indicates that plaintiff believed *many other employees were subject* to the *same* wrongful *termination*, and *demonstrates* that '***determinative***' discrimination was *prior-unknown*.

By [illegible], the court is to '*identify* allegati[illegible] of trust;' however, in *prejudice* for this case and the *pro se plaintiff*, the court **disregards** *this (and other)* plaintiff *testimony* to dismiss her claims and *conflict* with the *relevant precedent* in [*Bell v. Twombly; Ashcroft v. Iqbal; Phillips; Sonnier*].

Furthermore, the IQVIA Rx Restatements in *Russomanno I,* **distinctly** documented that the *inaccurate* sales reports were "***nationwide,*** across all brands" therefore, *inclusive with this document,* plaintiff testimony further *demonstrates* how plaintiff believed the *termination process* was being *implemented* **equitably** across the entire ***national*** team. [IQVIA Rx restatements: ***document***], at **[Exhibit A, Dkt. 46, Att. 1; *Russomanno I*]**.

In appellee brief, the defendants reference more district court opinion:

> "However, even *assuming* Plaintiff was unaware of the alleged discriminatory act until after *Russomanno I* was dismissed, the Third Circuit is clear that where the facts supporting the second lawsuit's claims existed prior to the commencement of the first lawsuit, they could have and should have, been

> brought in the first lawsuit, (Citing *Elkadrawy*, 584 F3d at 173-174), and "(*concluding* [That] Plaintiff may have learned of additional information supporting her claims has no bearing on whether she could have brought the claim in her original complaint)."

This segment of precedent conflicts with the '*relevant precedent*' (in *Elkadrawy*) and therefore, is invalid to support case decision for *Russomanno II*. *Elkadrawy* was a first-suit discrimination claim upon second-suit '**additional**' discrimination claim, and was barred by res judicata for *failure to bring claims* within the *90-day period mandate*. Therefore, the court reasoned in conflict with the '*relevant precedent*' in [*Elkadrawy*]; and [*L-Tee electronics Corp*]; [*Mullarkey*]; whereby, new and discrete, (discriminatory), and/or fraudulently concealed information provide *exemption* and ***will prevent res judicata;*** [appeal opinion, 7,8].

Contrarily, *Russomanno II* did not bring case upon "*additional*" information, but rather on "*new and discrete*" evidence information. Furthermore, the new evidence was *prior fraudulently concealed*. Plaintiff also provided

supporting precedent in *opposition to dismiss* [. 42-1; p26, *R-II*], and *appellant brief* on the concealment of discrimination; [appellant brief, 15-B; A113].

As indicated *numerous* times throughout all plaintiff briefing, *Russomanno II* did not bring any discrimination statute (claim) upon any *prior* (claimed) discrimination statutes per *Russomanno I.* The court *repetitively* **conflicts** with *relevant precedent* when determining *Russomanno's* cases "same-claim" or "additional information."

Defendant testimony in the motion to dismiss *Russomanno I,* (addressed above), presented *evidence* that the policy was actually "**new**" and **not** standard or **past policy**, and that the policy was done in *discriminatory process*, when stating it was '*implemented*' "by one manager, for *team* members." Plaintiff *immediately then* asserted discrimination in her 'opposition to dismiss.' By this time, ten months had passed since plaintiff filed her complaint on 1/11/19 and entered opposition to dismiss on 10/8/19 and

learned 'no else was ever terminated by the policy change.' *See*: *Russomanno I*, at [Dkt. 46 statement facts #3].

In *Russomanno I*, plaintiff addressed that the policy *had been presented* as "**supposed**" '*past, standard* policy.' The also court *references* this same testimony as '*plaintiff assumption.*' (*See* below):

> "13. In one quarter plaintiff narrowly missed goal by 99.05% (noting that IQVIA 2-year script adjustments would more than likely have revised NB in a way that placed plaintiff at or over goal)." Furthering... "It has been observed and noted that other representatives have been treated differently based on age, sex, or race, and **in the past**, have been omitted from this **supposed** 8 consecutive-quarter, rule; unlike the plaintiff (interrogatories, discovery, and representative witness will address such factors)." (emphasis underline); [*Russomanno I*, comp., 11].

The statement was addressing plaintiff's past perceptions to a '*company culture of discrimination*,' and was noting that past employees (no longer employed), seemed to **have not been** *required* to adhere to the '**supposed**' 8-quarter *standard* policy (the company was *now enforcing*); neither had anyone been terminated in the past for *not*

meeting go Plaintiff reminds this court that *h* the defendants and the district court stated this (plaintiff) testimony was "***absent any elaboration.***"

However, Plaintiff '***did elaborate***' on these perceptions (*later* in the same complaint) to where other representatives, ***in the past,*** *were not subject* to this **standard** policy. Plaintiff asserted the following in complaint, *Russomanno I:*

"Previously, the representative there," (in Philadelphia, PA) "Theresa Murtaugh, (a majorly successful experienced rep with 8 Presidents Club awards at another company) could not reach goal in 2-years (and ultimately left Sunovion of her own accord)." (emphasis underline). [*Russomanno I*, complaint, 15]; [Supp. App'x 155].

Furthermore, Plaintiff's statement was expressing she hadn't *ever realized* the rule had been a *past standard.* Plaintiff was *clearly unaware* (as demonstrated by this statement) that the policy was *actually* a "new"-created,

unilateral cy, implemented by *only one ma* er, *for only one sales team, which terminated only the plaintiff in discriminatory action.* Had plaintiff been aware of this information, she would have '*expressly asserted*' discrimination in ***determinative*** action by *unilateral policy change. Similarly*, upon the newly-arising evidence, plaintiff did ***next*** **'expressly assert'** ***discrimination*** in her '*opposition to dismiss*' *Russsomanno I.*

'Nowhere' in *Russomanno I* did plaintiff assert any *known knowledge* to the *unilateral policy change* which is ***'essential'*** *material of fact* for **'determinative'** discrimination in *Russomanno II.* The above statement, which the courts defined as '*plaintiff assumption*,' and '*absent any elaboration*,' **cannot** constitute ***material*** **fact** for ***determinative*** discrimination. *Therefore,* the court's reasoning to '*essentially similar facts*' (among the two cases) conflicts significantly with precedent, and courts decision by [*Sheridan*]; [*Athlone*]; and [*Lubrizol*] conflicts in relevance.

Instead, plaintiff actually asserted that her termination was the result of "**retaliation**" because of her *multiple sales inquiries* on the *sales reports*, (and not (*determinative*) discrimination, which was prior-unknown).

According to *Russomanno I*, [complaint, p12, #14]:

> "14. Multiple Sales Data Inquiries, oral questions, requests for specific tools and specific coaching methods etc. on behalf of the plaintiff during this PIP period and before is another hidden cause for Sunovion to issue termination. Sunovion has touted transparency as their commitment to employees, but plaintiff's inquisitions for further investigation gave Sunovion reason to '**punish' plaintiff in a retaliation** so to not reveal in greater extent the 'salesforce-unknown' secretive, protected, corporate in-house political, dishonest policies that exist toward discrimination favoritisms, networks, and the like."; (emphasis added); [*Russomanno I*, compl., p12].

Plaintiff was a*gain* clearly speaking to **past** observations, inclusive of representative *rumors*, that historically, Sunovion had been known to display a *culture* of discrimination toward its employees. Nonetheless, when filing *Russomanno I*, plaintiff was *still blinded* to any

determine animus action *specifically enacted* in ***target against her.***

Plaintiff also provided further testimony to the new-evidence and fraudulent concealment (of policy change) in her opposition to dismiss (and also in her appellant brief) for *Russomanno II,* as follows:

> "Plaintiff was 'unaware' that company process had been 'distinctly altered' until giving rise in *Russomanno-I.* Defendants gave *tangible* testimony by *own admission* per Motion to Dismiss **[Doc. 33-1, pgID 508]**, that they acted in discriminatory action with a new policy, (*discriminatory on its face*), stating: "*new management implemented a new policy...*" Until that statement, Plaintiff was under normal expectation that the new policy was being equitably applied to every salesperson within the same Neurology Division. **[Exhibit 1]**; ***Ref:*** Case **3:19-cv-05945 [Doc. 33-1, pgID 508]**, and [Doc 42, pgID 2158]; [Appx. v1] **A29, A30**. (Appeal brief, 7).
>
> "Plaintiff had expected that the policy was a blanketed, equitable and fair policy that was being applied to the entire salesforce and not one singular sales team on the salesforce. Unbeknown to the Plaintiff at the time, or rather covertly hidden from the Plaintiff, was the fact that this rule was newly implemented, by one new manager, to apply to only one new sales team within the entire division, and which could also only- apply to a few members of that sales team by their term-length of employment; therefore, "*a policy clearly discriminatory on its face.*"

[Exhibit 1], [Doc. 33-1, pgID 508], [Doc. , pgID 2158], [Doc. 1 pgID 22]; [Appx v1] **A29, A30, A31.**" (emphasis underline); [appeal brief, 8].

Plaintiff Appellant's appeal brief elaborates even further:

> "Counsel's '*misleading*' remark that Plaintiff was disingenuous to being unaware of discrimination claims prior *Russomanno-I*, is again, *simply far-reaching*. Plaintiff spoke to policy "***in the past***" while still being under the ***misled impression*** that the "***supposed*** (8 Qtr.)" policy had been the *customary* policy. Determinative discrimination was still unknown and unseen by the plaintiff." (appellant reply, 11).
>
> "Thereby, Plaintiff could not have pursued a discrimination claim in *Russomanno-I* until later arising by Defendants own "tangible testimony" and "admission" statement in their Motion to Dismiss (*Russomanno-I*)." [appellant brief, 6,7]; [appellant reply, 11].
>
> "Lastly, Plaintiff asserts throughout amended complaint (*Russomanno II*) **[A42]** and Appeal Brief **[pages 6, 7]** "how" the new-policy was "discriminatory on its face," laden with animus." [appellant reply, 11].

Additionally, third circuit *conflicts* with '**own**' precedent In ***Bennun v. Rutgers State Univ.***, 941 F2d 154, 163 (3d Cir. 1991), denying '**own**' [***Kozyra***] wherein, the "entire controversy doctrine is a "broad one" and "*more*

preclusive ◯ *n*" res judicata.' [appeals opinion ◯ ft.5]; [*See*: *appellant brief, 14,(*complete* Kozyra argument)].

> "the Third District held that the entire controversy doctrine did not foreclose any of Bennun's federal actions because "the 1984 state action sought relief relating solely to the employment agreement and not as to protection of [Bennun's] Constitutional and Civil rights."
>
> "Further, the district court rejected Rutgers' claim that Bennun's 1984 state-court action barred him from bringing the claims in this present case. It held the entire controversy doctrine did not foreclose any of Bennun's federal actions because "the 1984 state action sought relief relating solely to the employment agreement and not as to protection of [Bennun's) Constitutional and Civil rights" *Bennun v. Rutgers State Univ.*, 941 F.2d 154, (3d Cir. 1991)." [appellants brief,14-15]; [rehearing petition, 12-13]; [appeals opinion, 6: ft.5].

Turning to the remand reconsideration dismissal within 'one-same' ruling decision for *a simultaneous* dismissal with the motion to dismiss *Russomanno I.*

Plaintiff was issued same day, *simultaneous* denials for plaintiffs 'remand reconsideration' and defendant's motion to dismiss, *Russomanno I.* Furthermore, (*conflicting with precedent*), the court also **withheld** any issuance for

leave of co[illegible] *to reinstate timely action* for the [illegible] *-evidence*. The court additionally decided amendment would be *futile.*

Therefore, plaintiff filed subsequent claim in what would otherwise be a 'timely' *90-day period* (as followed in Elkadrawy), notwithstanding, a pandemic crisis and period of court closures. *Russomanno I* was dismissed May 18, 2020, and plaintiff filed subsequent claim, *Russomanno II,* on July 31, 2020 with the Superior Court of NJ, Monmouth County (MON-L-002421-20), later removed to the US District Court for the Third Circuit on 9/4/20 (Trans ID: LCV20201336587).

Plaintiff is *entitled to subsequent claim* for **new and discrete *'determinative' discrimination** arising in Russomanno I.* Plaintiff **learned** of the **new evidence** when Defendants entered their motion to dismiss on 10/11/19, [Dkt. 33], **after** plaintiff entered a remand reconsideration, filed 10/3/19, [Dkt. 30]; [***Russomanno I***]. Plaintiff was not given *righteous opportunity* to address the

new evide[illegible]*nformation after* the 'opposition [illegible]*ismiss*' because the '*remand* reconsideration' was still in process and waiting decision. Ultimately, the decision for the remand was delivered within a '*one-same* opinion' as the (dismissal) decision for defendant's motion to dismiss.

Thereby, plaintiff's opportunity in *due process* for the *newly arising* '**determinative**' discrimination claim was '*completely*' removed. On such basis, plaintiff should have been *permitted* a *timely leave of court* to *reinstate* any further claims against the defendant employer. Furthermore, plaintiff should have been granted any appropriate amendments, either for *Russomanno I*, or *Russomanno II*; whereby, amendment (thereby), *would not be futile*. Thus, court *conflicts* with relevant precedent when relying on [*Grayson*] for amendment; [appeals opinion, 9].

In district opinion, the court essentially *comingles* plaintiff's '***remand** reconsideration*' by *conflicting precedent* relevant for a '***judgement** reconsideration*.' In opinion to

[*Russomanno I*], the court states: "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). (emphasis under); [district opinion, 6; *Russomanno I*].

Despite the *significant conflict* for *relevance* to the *Russomanno* cases (i.e., judgement reconsideration (*to foreclosing all claims*), *instead of remand reconsideration*), [*Blystone*] does serve to demonstrate that precedent in '***new arising evidence***' obstinately *governs a **firm** right to continuance,* whether permitted by reconsideration, amendment, leave to reinstate, or ***subsequent** claim.*

Plaintiff *did not request* a judgement reconsideration *after* the *dismissal* of *Russomanno I.* Instead, plaintiff filed subsequent claim, *Russomanno II.* The dismissal of *Russomanno II* as 'same-claim' *significantly conflicts* with precedent and ***revokes all due rights for continuance*** to

adjudicate[illegible]ims arising by '*newly discovered*[illegible]*lence*' from the prior case.

Plaintiff is entitled to due process, the courts assumption of trust, subsequent claim based on newly determined evidence; wherein, appropriate leave of court to reinstate action was unjustly *withheld* upon a *simultaneous* dismissal for a '*remand* reconsideration,' (*together in same-opinion),* with the motion to dismiss. These actions of the court *distinctly conflict* with precedent; whereby, the court's foreclosing on all plaintiff's rights for *due process* is unjustified and prejudice.

Turning to the remaining res judicata element decided for "same-parties." Under NJLAD the individual defendants are liable and can be held under company corporation. Appellants Brief outlines the following:

> "Under NJLAD, the Defendants are considered bona-fide executives, holding high policy making positions and authorized to make tangible decisions affecting plaintiff's employment and who direct plaintiff's day to day work activities. **[Exhibit 2]**,

[Dk pgID 1126] **A35**; ***also:*** [Appx 2], laintiff Amended Complt."

"Defendant parties are each Directors who encompass the "bona fide executive" role. Plaintiff posed a causal connection to the aiding and abetting for defendant liability wherein, each individual director and supervisor named played a part in the employment actions that were substantially motivated by discriminatory animus. All defendant parties were responsible in some way for '*tangible*' elements pertaining to plaintiff's performance and outcomes. **[Exhibit 2]**, [Doc. 42, pgID 2167], [Appx. v1]**A36**; [Doc. 42] opposition; **[Appx v2]**complaint." (appellant brief, 8).

"C. NJLAD (Aiding and Abetting provision, Individual Defendants Liable):"

"The NJLAD state law makes provision for individual liability in workplace wrongdoing. Any person who aids and abets a violation of this law may be held individually liable under the "aiding and abetting" provision of the New Jersey Law Against Discrimination, N.J.S.A. § 10:5-12(e). New Jersey courts, under NJLAD, hold that supervisors can be personally liable for their illegal conduct under this theory. The New Jersey Supreme Court expands the definition of "supervisor" for purposes of the NJLAD as an employee who is (1) authorized to undertake tangible employment decisions affecting the plaintiff, or (2) authorized by the employer to direct the plaintiff's day-to-day work activities; *Aguas v. New Jersey*, 220 N.J. 494,529 (2015). Further, under NJLAD, to hold a supervisor liable as an "aider and abetter." a plaintiff must show that the individual (1) performed a wrongful act that caused an injury; (2) was generally aware of his or her role as part of an overall illegal activity at the time that he or she

pro[illegible]d the assistance; and (3) knowin[illegible]and substantially assisted in the principal violation. ***Tarr v. Ciasulli***, 181 N.J. 70, 83084 (2004). Aiding and abetting requires "active and purposeful conduct." *Cicchetti v. Morris County Sheriff's Office*, 194 N.J. 563, 595 (2008). The NJLAD allow plaintiffs to bring claims against individuals under the theory that they "aided and abetted" discrimination or harassment. **[Doc. 42-1, pgID 2178, 2179], Opposition (*all above*)**. NJLAD Section: I0:5-12(a) states: "a "bona fide executive" is a top-level employee who exercises substantial executive authority over a significant number of employees and a large volume of business. A "high policy-making position" is a position in which a person plays a significant role in *developing policy* and in recommending the *implementation thereof*." **[Doc. 42, pgID 2166, 2167], Opposition (*all above*)**. In, *Smith v. Millville Rescue Squad*, 225 N.J 373 (2016), the New Jersey Supreme Court has "issued reminder to the employers that the broad remedial purposes of the LAD are the guidepost by which "novel arguments" will be considered." The court further examined the "special rule" that applies to the LAD, calling for liberal construction "in order to advance beneficial purposes" on account of the LAD being "remedial legislation intended to 'eradicate to cancer of discrimination' in our society." Even "novel arguments" require our utmost care and attention in order that we may be steadfast in our efforts to effectuate the Legislature's goal of workplace equality." *Smith v. Millville Rescue Squad*, 225 N.J (2016). **[Doc. 42-1, pgID 2185, 2186], Opposition (*all above*).** [appellant brief, 17-18].

The district court did not apply the NJ [illegible]e claims to decision [opinion p. 8], [appellant brief, 12]. However, the appeals court cites the following in decision:

> "[R]es judicata may be invoked against a plaintiff who has previously asserted *essentially the same claim* against different defendants where there is a close or significant relationship between successive defendants." *Gambocz v. Yelencsics*, 468 F.2d 837, 841 (3d Cir. 1972)."
>
> "Here, the allegations against the individual defendants *exclusively* concern matters within the course of their employment with Sunovion that *were the subject of the Russomanno's first action*." (underline emphasis). [appeals opinion, 8].

Plaintiff's case allegations do not constitute *'essentially same-claim'* or same 'exclusive' matters. Material fact in 'determinative discrimination' for *Russomanno II* was never *subject* in *Russomanno I*. The ***nucleus*** of factual *allegations* giving rise to both suits is substantially different.

The court continues to *conflict reasoning* when extending to the individual defendants (same-parties element) by *again relying* on more "*essentially similar*" (same-claim) precedent. Plaintiff's two cases *do not hold* any

duplicity in additional statutes and cannot be justifiably held for same-claim upon the new 'evidence' information (prior-concealed) arising in *Russomanno I*; [*Elkadrawy*; *L-Tee Corp*]. *Russomanno's* cases are *substantially* different in '**assertion' for 'material fact**,' and, the court *continues* to *significantly conflict* with *relevant precedent* when relying on [*Gambocz*] to *inapplicably extend* for the individual defendants by same-parties element.

The court also conflicts the relevant precedent in *Faila v. City of Passaic*, and *Tarr v. Ciasulli*.

Plaintiff appellant elaborates on the misuse of precedent for these cases in her petition for rehearing en banc and quoted below:

> **"6.** This Court addresses *Tarr v. Ciasulli*, 853 A.2d 921, 929 (N.J.2004) and *Faila v. City of Passaic*, 146 F. 3d 149, 159 (3d Cir. 1998) as '*wrongly cited*' reasons to which defendants can invoke res judicata [opinion, pg. 9, *6].
>
> **7.** This court quotes *Faila v. City of Passaic*, ("It is fundamental to aiding and abetting liability that the aider and abetter acted in relation to a principal");

Tarr v. Ciasulli [opinion, pg. 9, *6]. According to case precedent, Faila v. City of Passaic:

"The Third Circuit Court of Appeals predicted that we would define the terms "aiding" and "abetting" consistent with the Restatement (Second) of Torts § 876(b) (1979). *Failla v. City of Passaic*, 146 F.3d 149, 158 (1998) ("[W]e predict that the New Jersey Supreme Court would find that an employee aids and abets a violation of the LAD when he [or she] knowingly gives substantial assistance or encouragement to the unlawful conduct of [the] employer."). [*Failla v. City of Passaic*].

Therein, the Third District defines aiding and abetting for individual liability, and in citing such, this Court also determines that NJLAD does in fact make provision for aiding and abetting. Thereby, NJLAD aid and abet provision allows for the individual liability of the defendant directors in this case, *Russomanno II.*

Although, res judicata was applied in [*Tarr v. Ciasulli*] and [*Faila v. City of Passaic*], the two cases were cases regarding sexual harassment and disability accommodations in a work transfer. The court applied the aiding and abetting standards to the individual determinative factors for each case. These case decisions do not support application of res judicata for plaintiff's case. The testimonial determinative factors for the individual defendants in *Russomanno II* have not been appropriately applied by this court.

Faila v. City of Passaic continued: "We agree that the Restatement provides the proper standard by

> which to define the terms "aid" or "abet" under the LAD. Also, the Restatement definition is consistent with the common usage of those terms. Thus, in order to hold an employee liable as an aider or abettor, a plaintiff must show that " '(1) the party whom the defendant aids must perform a wrongful act that causes an injury; (2) the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time that he provides the assistance; [and] (3) the defendant must knowingly and substantially assist the principal violation.' " Hurley, supra, 174 F.3d at 127 (citations omitted). [*Failla v. City of Passaic*].
>
> Plaintiff testimony in *Russomanno II* extensively cites the individual acts by these directors and how they assisted in knowingly contributing in actions causing the intended and final injury harm to the plaintiff. Thus, Plaintiffs NJLAD claim cannot be barred by res judicata. [*Failla v. City of Passaic*]." (rehearing en banc, 9-11).

The relevant precedent in *Tarr* and *Failla* recognize application of NJLAD as provision for aiding and abetting liability for individual defendants. Determinative factors must be then applied. The court did not apply plaintiff testimony as recaptured above from (appellant brief, page 8), and same-parties element for res judicata is unjustified.

The Supreme Court has the great power to exercise its jurisdiction to consider the *merits* of this case as reviewed upon these plaintiff reasons for granting the writ.

Russomanno II, has been unjustly barred by res judicata, *conflicting with relevant precedent.* Opinion cases for *Harding v. Duquesne; Sheridan; Athlone; Lubrizol; L-Tee Electronics Corp; Elkadrawy; Brxostowski; Cieskowska; Gambocz; Tarr; and Failia; Blystone;* were cited *in contrary* to Russomanno II and thereby, *conflict* in *relevance.* Court *further conflicts* when *suppressing* the *'relevant precedent'* they also reference in *L-Tee Electronics Corp.; Elkadrawy* for new-evidence and fraudulent concealment; when *suppressing Twombly; Ashcroft; Phillips; Sonnier* for plaintiff's *assumption of trust;* and *when denying* "own" decision to *Koyzra* and *Bennun for preclusive* precedent.

Russomanno I and Russomanno II hold *'no duplicity* in *statutes, did* not fail to adhere to any *time mandates* for

leave, (wh[illegible]n, the court *conspicuously withh*[illegible] precedent for leave to reinstate action); plaintiff is *entitled to due process* for *subsequent claim* upon *new evidence and fraudulently concealed* information; wherein, a *remand reconsideration* dismissal cannot serve to **juxtapose** as a *judgement reconsideration* and thus, justify to *completely foreclose* all further claims; whereby *Russomanno I* also *provided testimony* 'expressly asserting' that plaintiff was actually being terminated for **retaliation** (*not discrimination*); wherein, the *nucleus* of factual *allegations* giving rise to both suits is *substantially different* and the court *conflicts with precedent* when deciding "essential similarity" and same "exclusive" matters were in subject; whereby further *extending* an 'unjustified' 'same-claim' precedent, the court *also conflicts precedent* for same-parties. The court fails to apply NJLAD aid and abet provision to *'determinative factors'* for the individual defendants whereby, *extending blanket* from *conflicting* same-claim precedent to *also conflict* for same-parties.

PRIOR COURT JURISDICTION STATEMENT

District Court had 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. § 1367(a).

CONCLUSION:

The courts have departed from the usual course of judicial proceedings, and relevant precedent calling for the Supreme Court's supervisory power. This case *Russomanno II*, has been inappropriately barred by res judicata and conflicts with appropriate, relevant precedent. Plaintiff is entitled to **due process** for **subsequent claim** upon **new-arising** determinative discrimination **evidence**, (unclaimed prior). The ***nucleus of allegations*** in *Russomanno I* and Russomanno II are ***substantially*** **different** and the cases hold ***no duplicate statutes*** for discrimination. Plaintiff provided testimony assertion to the **new-evidence** in opposition to dismiss *Russomanno I*, (thereby, **immediately alerting the court** to newly-arising evidence). The material

facts in *Russomanno I* **expressly assert wrongful** termination and ***retaliation***, not discrimination. The courts unjustly determine that plaintiff could have brought discrimination in *Russomanno I,* relying solely on **one** plaintiff statement they define as "**assumption**" then explaining the assumption was "**absent any elaboration.**"

Plaintiff's testimony **disputes with evidence** the court conflict(s) in relevant reasoning.

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

CERTIFICATION

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

Respectfully Submitted,

/s/ Gina Russomanno

Date: November 22, 2021