

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.*

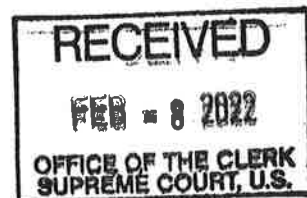
Respondent(s)

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

PETITIONER REPLY TO BREIF IN OPPOSITION

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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 similarity*' 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.

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.*

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STATEMENT OF REPLY

Foremost, it is *imperative* the Superior Court acknowledges that the NJ District Court's dismissal of *Russomanno I*, in *uniform* decision with a 'jurisdiction remand reconsideration,' *unjustifiably foreclosed* on plaintiff's rights to due process for new "determinative" discrimination evidence arising from that case. The NJ Appeals Court incorrectly affirmed that dismissal decision.

By rendering a uniform decision that simultaneously dismissed two, unconsolidated and separate motions in a *single-decision*, the District Court thereby *quashed* plaintiff's due right to bring further claims for new-evidence (arising from *Russomanno I*), while also withholding all remedy for amendment or timely leave to reinstate action.

Thereby, Plaintiff is entitled to bring *subsequent* claim within new case *Russomanno II*, and *res judicata*, *same-claim preclusion* cannot be met. *See Pet*: [pgs. 26-30, 33-36, 39-40, 1-5].

Plaintiff was issued same day, *simultaneous* denials for plaintiffs prior-pending, 'jurisdiction reconsideration' and defendant's after-entered 'motion to dismiss' *Russomanno I*, (wherein, *dismiss motion* surfaced new-arising *determinative* evidence).

Plaintiff filed a 'jurisdiction reconsideration', on 10/3/2019, [Dkt. 30], and then after-learned of new evidence (by Defendant testimony) when Defendants had after-entered their motion to dismiss on 10/11/2019, [Dkt. 33]. Plaintiff addressed this new evidence as determinative 'discrimination' in her Amended, opposition to dismiss, filed 11/4/2019, [Dkt. 46], [PgID. 843]. **See Writ:** [pg. 14-16].

Plaintiff was not given *righteous opportunity* to address the *new evidence* information *arising* in the 'motion to dismiss' whereby, the '*jurisdiction* reconsideration' was still prior-pending and waiting decision.

By issuing a *uniform* dismissal decision on both the jurisdiction reconsideration along with the motion to

dismiss, the District Court '*completely*' removed all plaintiff opportunity for further claim.

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 amendment to *Russomanno I* or timely leave to reinstate action. The District Court *withheld* all remedy.

The Lower Courts dismissal of *Russomanno II* cannot righteously be properly affirmed.

REPLY TO DEFENDANTS CASE STATEMENT

Plaintiff started work for employer Sunovion on September 15, 2016 (upon offer letter August 15, 2016).

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*. The PIP is not an 'essential' 'material fact' to both claims and is extensively discussed throughout Petitioners Writ. *See Pet*: [pgs. 8-15].

REPLY TO ARGUMENT

Petitioner has provided argument that the prior courts have departed from the usual course of judicial proceeding and have decided important federal question in conflict with relevant precedent.

First, res judicata cannot bar this case. (*Restating*): The dismissal of *Russomanno I* within a simultaneous, *uniform* decision, inclusive of a *prior-pending*, *unconsolidated*, 'jurisdiction (diversity) reconsideration,' improperly foreclosed all due process for new evidence claims arising by that case.

New claims, arising during the pending 'jurisdiction remand reconsideration' could not be rightfully addressed

when the court further withheld amendment and any timely leave to reinstate action.

Thus, the dismissal of subsequent claim, *Russomanno II*, is improper and should not be affirmed.

Res judicata is unjustified. The lower courts conflict relevant precedent for “essential similarity.” *See Pet.* [pg. 8-15, 33-34, 37-40, 1-5].

Second, Plaintiff could not have known or brought discrimination claims at the commencement of *Russomanno I*. Plaintiff did not attest ‘material fact’ to any ‘known-*determinative*’ discrimination in *Russomanno I*. Assumption or past employee observations are not ‘material fact’ to *determinative* discrimination (that was specifically enacted *against the plaintiff*). *See Pet.* [pg.10-15, 16-25].

Additionally, (*Restating*) when the District Court dismissed plaintiff’s (*prior-pending*) motion for ‘jurisdiction reconsideration’ within a single, uniform decision with the defendant’s (*after-entered*), motion to dismiss, (and

simultaneously withheld all remedy to address new evidence arising from the motion to dismiss), plaintiff is entitled to subsequent claim which could not have been addressed in *Russomanno I*.

Third, the same-parties, privity element for res judicata cannot extend by unjustified same-claim preclusion, and cannot be met under the NJLAD law provision for aiding and abetting. Petitioner addresses NJLAD law in writ. *See Pet*: [pgs. 30-32, 33-36, 37-40, 1-5].

I. Not Same Cause of Action:

A. Res judicata is precluded.

Russomanno I and *Russomanno II* are not connected in legal theory or transaction. The lower courts conflict precedent for ‘essential similarity.’ The underlying events, material facts, bad acts, and theories of recovery are different among suits. Same claim cannot be met. *See Pet*: [pgs. 6-16; 17-24]; [33-36]; [37-40]; [1-5].

Further, (*Restating*) the lower courts unjustly foreclosed new evidence claims by a *uniform dismissal* of the

prior-pending jurisdiction-reconsideration and the after-entered motion to dismiss (*wherein*, surfaced new-arising evidence).

B. **Russomanno I Never Raised Any “Determinative” Discrimination claims; New Evidence and Fraudulent Concealment was Set Forth.**

Defendant’s conflict reasoning that plaintiff should have been aware of “*potential* discrimination” based on *assumption* or *past observations*. The reasoning is moot. “*Determinative*” discrimination is ‘*essential*’ for claim. ‘*Determinative*’ discrimination was *prior-unknown* and *fraudulently concealed*; therefore, the specific facts to ‘*determinative*’ discrimination *did not exist* before the first claim. *See Pet*: [pgs.10-17, 18-26, 33-34, 37-40; 1-5].

Defendant testimony in *Russomanno I* distinctly stated, (plaintiff’s) “*new* management implemented a new policy...” that “(*team members*)” who did not meet goal...” *See Pet*: [pg. 24-25]; *Also See*: Motion to Dismiss, *Russomanno I*, [Dkt. 33-1, PgID 508], {*continued*, defendant statement}.

The Neurology's *Divisional* Directors were "*not new*," only plaintiff's management was "new" to the "also *new*" Philadelphia Region (plaintiff's team). Defendants motion to dismiss *cannot demonstrate in any way* that the Neurology's *Divisional* Directors implemented a new policy for the entire salesforce (i.e., every salesperson).

Further, (*Restating*) Plaintiff did not *amend* her complaint for *Russomanno I* since a 'jurisdiction reconsideration' was *prior-pending*, in which the District Court simultaneously dismissed the 'remand' along with the (*after-entered*) motion to dismiss (*wherein, new-arising evidence*), and thereby, also withheld any option for amendment or leave to reinstate.

Per Defendant Argument *footnote 1*, Plaintiff thoroughly addressed assertions with "**But-For**" causation regarding the 'determinative' discrimination (arising in *Russomanno I*). *See: [Appeal Brief, pg. 10, 21]*.

Additionally, Plaintiff asserted *fraudulent concealment* of the new evidence with supporting 'material

statement' and case law which was presented to both the District Court and Court of Appeals. **See Pet:** [pg. 24-25]; [**Appeal** Brief, pgs. 4,7-8,15].

Res judicata, same-claim, cannot be justified or affirmed.

II. Res Judicata, Same-Parties, Cannot be Justified. NJLAD Establishes Provision for Aid and Abet.

Same-parties or privities extends from same claim which cannot be justified. The two cases do not involve 'same-essential' similarities or underlying events. Same parties or privity element is also unjustified. NJLAD establishes provision for aid and abet. **See Pet:** [pgs. 6-17, 18-25, **30-36**, 37-40; 1-5].

Furthermore, (*Restating*) Plaintiff is entitled to *subsequent* claim. Plaintiff could not address new evidence information arising in *Russomanno I* whereby, pending a decision for a 'jurisdiction remand.' In a single, *uniform dismissal* with the motion to dismiss (*entered after the remand*) and (*wherein, dismiss motion surfaced new-arising*

evidence), the district court foreclosed and withheld any option for amendment or leave to reinstate case.

Res judicata, same-parties, is incorrect and cannot be justified.

In regard to Defendant Argument footnote 2: the correlation of res judicata and the entire controversy theory is derived upon the NJ District Court's '*own*' case precedent. **See Pet:** [pgs. 25-30]; [***Appeal** Brief, pgs. 13-15].

Lastly, in clarification to Defendant [**Appendix 34a**], "Letter Order to Litigants from Judge Wolfson," dated, May 24, 2021, [Dkt. 53], which oddly Denys plaintiff's 'supposed' request for (judgement) reconsideration (Plaintiff Letter to Judge Wolfson, (never an actual 'Motion')), [Dkt. 51], dated, May 10, 2021:

The 'CLERKS QUALITY CONTROL MESSAGE' was immediately entered on May 12, 2021 advising that Plaintiff's Letter was '*incorrectly filed*' (by the Clerk's Office) as a 'Motion' and was terminated.

Furthermore, Plaintiff filed a ‘Notice of Appeal’ on May 21, 2021 [Dkt. 52], three days *prior to* this **Letter Order** from Judge Wolfson on May 24, 2021, [Dkt. 53]; Yet, the Letter Order still set out to “Deny” the ‘*supposed*’ reconsideration *request* which was ‘*already-terminated*’ through the Clerk’s Quality Control.

CONCLUSION

The lower courts have departed from the usual course of judicial proceedings, conflicting relevant precedent, and calling for the Supreme Court’s supervisory power. This case *Russomanno II*, has been incorrectly barred by res judicata.

Whereas, *Russomanno I* and *Russomanno II* hold ‘*no duplicity in statutes*;

Whereas, the ‘*nucleus of allegations*’ in each case are *substantially* different;

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*;

Whereas, 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, *uniform-opinion*, *dismissals* with the *prior-pending* 'remand' reconsideration and the motion to dismiss);

Whereas, the *motion to dismiss* was *after-entered* the *remand*, and wherein, the *dismiss motion surfaced new-arising 'determinative' evidence*;

Whereas, that dismissal action also *withheld* *righteous proffer* for any *amendment* or '*leave to reinstate*' action);

Whereas, plaintiff's two claims were *judged* by the District court to be 'not identical';

Whereas, NJLAD provisions for Aid and Abet and the court *never applied individual "determinative factors"* for defendant liability;

Whereas, the court *decidedly denies "own" precedent*, that the 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; *Russomanno-II*].

For these reasons, as specifically set forth in Writ Petition [**Pet**: pgs. 1-40], it is respectfully requested
Petitioner's Writ of Certiorari be **GRANTED**.

CERTIFICATION

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

Respectfully Submitted,

/s/Gina Russomanno



Date: February 4, 2022