No. ________

In the Supreme Court of the United States

RALPH PETERSON,

Petitioner,

v.

SUTTER BAY MEDICAL FOUNDATION, ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Federal Antitrust and Due Process Protections

Whether a physician who suffers network exclusion, contract loss, and practice-sale interference after exposing an unlawful Medi-Cal, kickback and market-domination scheme may seek federal relief under continuing-violation and concealment doctrines that toll the statute of limitations for those claims.

2. Anti-SLAPP and State Court Procedure

Whether the Ninth Circuit erred in applying California's anti-SLAPP statute, Cal. Code Civ. Proc. § 425.16, to strike all state-law claims without conducting the claim by claim analysis required by *Baral v. Schnitt*, 1 Cal. 5th 376 (2016), and *Bonni v. St. Joseph Health System*, 11 Cal. 5th 995 (2021), thereby extending anti-SLAPP protection to non-petitioning conduct.

3. Immunity and Jurisdictional Dismissal

Whether the Ninth Circuit misapplied *Mishler v. Clift*, 191 F.3d 998 (9th Cir. 1999), by extending absolute quasi-judicial immunity to Medical Board members for ministerial acts—false communications to insurers made long after proceedings ended—and erred in ordering dismissal with prejudice of state-law contract claims barred by the Eleventh Amendment, contrary to *Freeman v. Oakland Unified School District*, 179 F.3d 846 (9th Cir. 1999)

PARTIES TO THE PROCEEDINGS

Petitioner and Plaintiff-Appellant below:

- Ralph Peterson, M.D.

Respondents and Defendants-Appellees below:

- Sutter Medical Foundation
- Sutter Bay Hospitals, dba Alta Bates Summit Medical Center
- Eden Medical Center
- Sutter East Bay Medical Foundation
- Neil Stollman
- Rod Perry
- Phillip Rich
- Cathy Lozano
- Kristina Lawson
- Howard Krauss
- Randy Hawkins
- Richard Fantozzi
- Hedy Chang
- Dev Gnanedev
- Ronald Lewis
- Laurie Rose Lubiano
- Asif Mahmood
- Richard Thorp
- Eserick Watkins
- Felix Yip
- Denise Pines
- Sharon Levine
- Evelyn Schipske
- Jamie Wright
- Linda Whitney
- Sutter Bay Medical Foundation
- Philip Rich

LIST OF PROCEEDINGS

United States Court of Appeals for the Ninth Circuit

No. 23-2911

Ralph Peterson, M.D., *Plaintiff-Appellant* v.
Sutter Medical Foundation, et al., *Defendants-Appellees*

Opinion: July 2, 2025

Rehearing Denial: November 5, 2025

U.S. District Court, Northern District of California

No. 3:21-cv-04908

Ralph Peterson, M.D., *Plaintiff* v.
Sutter Medical Foundation, Et Al., *Defendants*

Judgment: October 6, 2023

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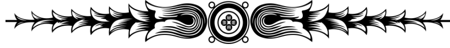

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit, Case No. 23-2911, is unreported and is included at App.la-8a.

The United States District Court for the Northern District of California order granting summary judgment is unreported and included at App.9a-38a.

The District Court order granting the Anti-SLAPP motion is unreported and included at App.40a-73a.

The District Court order granting motion to dismiss is included at App.74a-112a.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on July 2, 2025. (App.la). A timely filed petition for rehearing was denied on November 5, 2025. (App.113a). This Court has jurisdiction under 28 U.S.C. § 1254(1). Petitioner was granted a sixty days extension within 90 days of the denial of rehearing. Sup. Ct. No. 25A870. The Petition is timely.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., amend. I

Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const., amend. XIV, sec. 1

No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

Sherman Antitrust Act, 15 U.S.C. §§ 1-2

Section 1 prohibits contracts, combinations, or conspiracies in restraint of trade. Section 2 prohibits monopolization and attempts to monopolize. *See* verbatim text at App.116a.

California Code of Civil Procedure § 425.16(b)(1) (Anti-SLAPP)

> (b)(1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

Other provisions in the appendix:

42 U.S.C. § 1320a-7b(b) (App.116a)

42 U.S.C. § 1395nn (App.117a)

Cal. Code Civ. Proc. § 335.1 (App.119a)

Cal. Civ. Code § 47(b) (App.119a)

Cal. Bus. & Prof. Code § 805 (App.119a)

INTRODUCTION — WHY THIS CASE IS IMPORTANT

This case is important because it involves a wide-spread scheme to defraud the Medicare system. The fraud takes place in Oakland, California, and has been ongoing for several years. The scheme successfully targeted Medi-Cal (Medicaid) patients because they are less likely to notice over-billing (up-coding).

Dr. Peterson is an African American physician that has served Oakland's Medi-Cal community as a

physician and advocate since 1983. Until the early 2000's, Medi-Cal cases were not pursued by most healthcare providers because of lower reimbursement rates. For many years, those patients were "steered" away to county facilities. During the early 2000's, Sutter Bay Hospitals devised a scheme to make Medi-Cal procedures profitable by "up-coding". SAC 41-55.

Upcoding occurs when a physician bills more expensive Medi-Cal services than actually provided. During February of 2009, Dr. Peterson was informed by the Alta Bates Physician Peer Review Board to add an "available" hospital anesthesiologist to his endoscopy procedures. Alta Bates is a Sutter hospital. Dr. Peterson refused, stating that the same was an improper cost.

After complaining, Dr. Peterson was forced to resign when he could not secure additional call coverage mandated by Alta Bates peer review panel.

To prevent him from complaining about the ongoing Medi-Cal fraud, Sutter filed a California Form 805 with the Medical Board of California (MBC), stating that he resigned in order to avoid an ongoing "quality of care" investigation. There was no ongoing investigation. Dr. Peterson was fully exonerated. None the less, Sutter and the "MBC" informed other healthcare providers, insurance companies and third party payors that Dr. Peterson had been disciplined and was facing new "medical board problems". SAC 54-80. There were no new medical problems.

Sutter was able to make these false accusations with impunity, because it controlled the medical disciplinary process. Its legal counsel, Hanson & Bridgett, represented Alta Bates Hospital's peer review panel

and had members serving in various CMB positions. Sutter used its disciplinary power and kickbacks to force physicians to "go along" with its Medi-Cal fraud. Non-cooperating physicians, like Dr. Peterson, were subjected to relentless disciplinary action.

This case illustrates the misuse of California's Anti-SLAPP statute to immunize the MBC and to collectively foreclose meaningful federal review of entrenched Medi-Cal fraud in the healthcare industry. Dr. Peterson alleges that Sutter used Alta Bates Hospital's peer review panels and the MBC, under the guise of mandatory reporting, to perpetuate its fraud, punish non-cooperating physicians, and eliminate competition by forcing him out of the endoscopy market, and then, continuing to interfere with his healthcare contracts and the sale of his medical practice years later.

Dr. Peterson was denied procedural due process when the lower Court treated all of those acts as a single time-barred "resignation case", and then immunizing the post-proceeding conduct through anti-SLAPP and absolute immunity doctrines. This effectively placed the coordinated pattern of retaliation, defamation and anti-competitive exclusion beyond the reach of federal civil-rights and antitrust laws.

First, it allows a state's anti-SLAPP statute to be used in federal court to strike mixed claims in bulk. This occurs even when substantial liability arises from non-petitioning and non-public issue conduct — such as confidential warnings to insurers and a single potential buyer. That approach conflicts with the careful parsing required by the Baral, Bonni, and FilmOn cases.

Second, it constricts accrual and tolling doctrines so severely that victims of long running, concealed schemes cannot recover for discrete, within limitations injuries. This problem is especially acute in regulated industries, where government investigations are sealed. The result undermines Congress's clear intent under the Clayton Act and § 1983 to reach such injuries.

Third, it stretches quasi-judicial immunity to cover ministerial and administrative communications made years after judicial proceedings have closed. This expansion invites boards and similar entities to exploit their informational monopolies damaging professionals' livelihoods while remaining absolutely shielded from suit.

The most troubling consequence is its impact on Oakland's protected, indigent, and underserved medical community.

Those issues are not confined to one doctor in Oakland. Consolidated healthcare systems, mandatory reporting regimes, and peer-review structures exist in every state. If lower courts may (1) characterize all downstream harm as a "ripple effect" of an initial event, (2) repackage continuing anti-competitive and retaliatory acts as untimely, and (3) cloak post-hoc credentialing communications in absolute immunity and anti-SLAPP protection, then physicians and other licensed professionals will have no realistic way to challenge coordinated campaigns that drive them from the market. This Court's intervention is needed to clarify the limits of anti-SLAPP use in federal court, to reaffirm established accrual and tolling principles in the context of continuing schemes, and to restore the functional boundaries of quasi-judicial immunity so

that state actors remain accountable when they are acting outside their adjudicatory role.

STATEMENT OF THE CASE

A. Introduction

Dr. Ralph Peterson is an African American physician. At all times relevant hereto, Dr. Peterson provided gastroenterological outpatient care primarily to Oakland's indigent and underserved patient community. Dr. Peterson filed this civil rights action after suffering retaliation for challenging a systematic scheme by Sutter Health and the Medical Board of California (MBC) to overcharge his Medi-Cal patients. Specifically, Dr. Peterson was denied out-patient hospital privileges after he refused to "go along with" charging his Medi-Cal patients for "available", but unnecessary anesthesia. For over 30 years, Dr. Peterson had provided anesthesia to his own patients without incident. He bi-annually passed Sutter's anesthesia tests which were necessary to renew his outpatient privileges. Because he refused to cooperate in Sutter's illegal billing scheme, he was forced to defend against unfounded disciplinary actions and endure ongoing business disparagement related thereto.

This case raises critical issues about the scope of California's anti-SLAPP statute, the application of tolling doctrines for continuing violations, the boundaries of absolute immunity for state officials, and the proper procedure for dismissing claims over which federal courts lack jurisdiction.

B. Factual Background

1. Dr. Peterson's Medical Practice

From 1983 through 2021, Dr. Peterson operated an endoscopy clinic predominantly serving Oakland's indigent and underserved medical community. This population consisted primarily of African American and Hispanic Medi-Cal patients.

2. Sutter's Alleged Medi-Cal Kickback Scheme

Dr. Peterson alleges that Sutter Health implemented a systematic strategy to dominate Northern California's healthcare market through unlawful means, including:

- Paying kickbacks to participating physicians to steer profitable Medi-Cal procedures to Sutter facilities;
- Engaging in upcoding and fraudulent billing practices to make Medi-Cal procedures profitable;
- Controlling the physician disciplinary process through peer review panels, credentialing committees, and the MBC to garner physician cooperation;
- Using the disciplinary process to retaliating against non-compliant physicians like Dr. Peterson who refused to participate in Sutter's scheme.

In December 2019 and 2020, these allegations received substantial validation when Sutter agreed to pay $575 million to settle antitrust and kickback claims brought by the State of California after 10 years of inves-

tigating the company. That investigation was conducted under seal.

3. The 2009 Peer Review and Resignation

In February 2009, Dr. Peterson was questioned by a member of the Alta Bates Summit Hospital Board allegedly based on fabricated concerns about patient coverage obligations. Rather than submit to what he believed was a sham process designed to force him out, Dr. Peterson resigned his outpatient hospital privileges and opened his own endoscopy suite. This enraged Sutter which filed a mandatory Form 805 report with the MBC and National Practitioner Data Bank stating he resigned in order to avoid an ongoing investigation. There was no ongoing investigation. Dr. Peterson refused to participate in MediCal fraud.

4. Continuing Misconduct: 2014-2021

The critical factual allegations that distinguish this case from a stale 2009 dispute involve Respondents 'continuing course of conduct' within the statute of limitations period. From 2014 through 2021, Respondents repeatedly published false information on the MBC website stating that Dr. Peterson was the subject of prior and current disciplinary investigations. There were no investigations.

From 2014 through 2021, Respondents made false statements to numerous healthcare companies warning them about Dr. Peterson's "ongoing financial, medical malpractice, peer review and MBC problems, including communications to:

- Aetna
- Blue Shield of California

- HealthNet
- Cigna
- Community Health Plan
- Covered California
- United Healthcare
- Hill Physicians Medical Group.

Second Amended Complaint ("SAC") ¶¶ 6, 8, 46,125, 221.

From 2017 through 2021, Dr. Peterson lost or was denied provider contracts based on these false representations about ongoing disciplinary proceedings. In December 2019 and January 2020, when Dr. Peterson was negotiating to sell his medical practice and endoscopy clinic to Alameda Health Services, Sutter and MBC personnel interfered with the sale by making false statements about "ongoing problems with the MBC and financial difficulties". This interference caused the buyer to terminate negotiations. SAC 53. Throughout 2017-2020, the *qui tam* whistleblower action against Sutter remained under seal, further preventing Dr. Peterson from discovering the full scope of the kickback scheme and its connection to Sutter's targeted misconduct. SAC 127, 181.

5. Discovery of the Scheme

Dr. Peterson alleges that he could not have discovered the full nature of Respondents' unlawful conduct until:

- The unsealing of the *qui tam* whistleblower litigation in 2019-2020
- The 60 Minutes broadcast in 2020 about Sutter's anticompetitive practices. SAC 109.

- The December 2019 settlement announcement revealing Sutter's $575 million payment and admission to monitoring.

C. Procedural History

1. District Court Proceedings

Dr. Peterson filed this action on June 26, 2021, asserting federal civil rights claims (First Amendment retaliation, Due Process violations, discrimination), federal antitrust claims, and nine state law claims including breach of contract, negligence, intentional interference with business relations, business disparagement, and violations of California's Unfair competition Law and Unruh Act.

The District Court issued four critical rulings:

First, on July 20, 2022, the court granted Sutter's motion to dismiss the federal discrimination and antitrust claims as time-barred, finding they accrued in 2009.

Second, on the same date, the court granted Sutter's anti-SLAPP motion and struck all nine state law claims, awarding $105,526.01 in attorneys' fees.

Third, on October 6, 2023, after limited discovery, the court granted summary judgment on the remaining First Amendment and Due Process claims, again finding them time-barred.

Fourth, on February 2, 2022, the court also dismissed all claims against the MBC based on Eleventh Amendment sovereign immunity and dismissed claims against individual Board members based on absolute immunity.

2. Court of Appeals Decision

On July 2, 2025, the Ninth Circuit affirmed in an unpublished memorandum disposition. (App.1a) The court:

- Held all claims were time-barred because they accrued in 2009 when Dr. Peterson resigned;
- Rejected application of delayed discovery, continuing violations, continuing accrual, and equitable tolling doctrines;
- Affirmed the anti-SLAPP dismissal without addressing Dr. Peterson's claim-by-claim analysis arguments;
- Held that MBC members' communications to insurance companies years after proceedings ended were protected by absolute immunity; and,
- Affirmed dismissal of contract claims against MBC with prejudice.

3. Petition for Rehearing

Dr. Peterson filed a timely petition for rehearing and rehearing en banc on September 15, 2025. (App. 113a). The Ninth Circuit denied the petition on November 5, 2025. In both the opinion and the order denying rehearing, the Ninth Circuit ignored Dr. Peterson's state breach of contract claim. The District Court dismissed the claim with prejudice pursuant to the Eleventh Amendment, thus denying him any due process stating that a federal court cannot "entertain a suit brought by a citizen against his own state". Dr. Peterson was entitled to bring the claim in state court per California Gov't Code § 814 "Nothing in this part

affects liability based on contract or the right to obtain relief other than money or damages against a public entity or public employee”.

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari to resolve important questions concerning: (1) the scope of state anti-SLAPP statutes in federal court; (2) the application of statute of limitations tolling doctrines for continuing violations; (3) the boundaries of absolute immunity for state officials engaged in ministerial functions; (4) and, the proper dismissal procedure when federal courts lack subject matter jurisdiction. Most importantly, this case should be considered as it involves the misuse Medi-Cal funds set aside for Oakland’s indigent and underserved patient community. They are victims that Dr. Peterson has advocated for since 1983.

This case squarely presents the interaction between first Amendment retaliation and private antitrust enforcement in a consolidated healthcare market. Dr. Peterson alleges that Sutter, a dominant hospital system in Northern California, and allied actors used kickback-driven referral steering, up-coding, sham peer review, and false credentialing communications to eliminate him as an independent competitor and advocate who provided less expensive legitimate medical services to his Medi-Cal patients. Dr. Peterson spoke out against Sutter and MBCs’ practices. In doing so, Dr. Peterson provided a distinct public service in refusing to participate in Sutter’s Medi-Cal fraud. The decision below effectively recharacterized Dr. Peterson’s

detailed allegations of post-2009 contract losses, network exclusions, and interference with his 2019-2020 practice sale as nothing more than stale "fallout" from a 2009 resignation, thereby denying him any Clayton Act remedy for discrete, within-limitations injuries to his business or property. The orders confined his claims to a time-barred civil-rights frame. That approach conflicts with this Court's recognition that each new exclusionary act that causes economic harm gives rise to a separate antitrust claim, and it undermines Congress's design of private treble-damage suits as a central tool for deterring anticompetitive conduct in precisely the kind of highly regulated, information-asymmetric healthcare markets at issue here. *Hennegan v. Pacifico Creative Service, Inc.*, 787 F.2d 1299 (9th Cir. 1986); *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321 (1971). Proper adjudication of these claims is necessary to prevent the rampant theft of Medi-Cal funds.

I. The Ninth Circuit's Anti-SLAPP Ruling Conflicts with California Supreme Court Precedent and Raises Important Federal Questions About State Procedure in Federal Court

A. The Decision Below Conflicts with Mandatory Claim-by-Claim Analysis

The California Supreme Court has clearly established that courts deciding anti-SLAPP motions must analyze mixed claims that alleging both protected and unprotected activity-on an allegation-by-allegation basis. *Baral v. Schnitt*, 1 Cal. 5th 376, 393 (2016). Here, the Ninth Circuit failed to conduct this required analysis. Instead, it accepted Respondents' characterization

that Dr. Peterson's claims rested on "five core allegations" related to the 2009 peer review proceedings. The court did not address Dr. Peterson's specific arguments that numerous allegations concerned non- protected conduct, including:

- False statements made from 2014-2021 to insurance companies about "ongoing investigations" after all proceedings had concluded (SAC, 171(5)-(8));
- Business interference in December 2019 when Sutter warned potential buyers about; fabricated "ongoing MBC problems" (SAC, 349, 358-361); and,
- Systematic defamation to credentialing agents and healthcare companies years after any protected proceedings (SAC, 278, 331(6-8), 358-361).

These allegations describe conduct occurring 5-12 years after the 2009 peer review ended. Such post-proceeding communications to private commercial entities cannot constitute anti-SLAPP protected activity or speech on matters of public concern. In *FilmOn.com Inc. v. DoubleVerify Inc.*, 7 Cal. 5th 133 (2019), the California Supreme Court clarified that it is not enough that speech merely touches on a subject of public interest. Courts must examine "the identity of the speaker, the audience, and the purpose of the speech" to determine whether it is made "in furtherance of" participation in a public conversation. There, confidential reports about online content, sold to paying clients for commercial use, were held "too tenuously tethered" to any public debate to qualify for protection under Code of Civil Procedure§ 425.16(e)(4).There is no protected speech

right in providing false disciplinary information to medical providers, health insurance companies and/or other third-party payors as part of a continuing scheme to defraud Medi-Cal. *Kasky v. Nike*, 27 Cal. 4th 939, 119 Cal. Rptr. 2d 296, 45 P.3d 243 (2002).

Dr. Peterson's allegations fit squarely within *FilmOn's* limiting principle. The challenged statements include private, targeted communications to insurers, credentialing agents, and a prospective purchaser of Dr. Peterson's medical practice and endoscopy clinic (Alameda Health Services). This is especially true where-as here, the false statements were made years after the 2009 quasi-judicial proceeding concluded and for the purpose of perpetuating Sutter's Medi-Cal fraud. The purpose of those false statements was not to inform public debate about physician discipline or public health, but instead to perpetuate Medi-Cal fraud. Under *FilmOn*, such confidential, commercial communications are not sufficiently connected to an "issue of [legitimate] public interest" to warrant anti-SLAPP protection.

B. The Decision Threatens First Amendment Rights

California's anti-SLAPP statute serves the important purpose of protecting defendants from meritless suits designed to chill protected speech. But its overbroad application in federal actions raises serious concerns. When federal courts apply state anti-SLAPP statutes to strike mixed federal civil rights claims, they risk undermining the remedial purposes of federal anti-trust and 42 U.S.C.§ 1983 laws. Here, the wholesale dismissal of claims based on post-proceeding fraudulent commercial communications threatens to immunize systematic Medi-Cal fraud, defamation, civil fraud

and business interference merely because they reference potentially protected activity.

C. This Case Presents an Ideal Vehicle

This case presents an ideal vehicle for addressing the proper scope of anti-SLAPP analysis in federal court where a large healthcare provider is using the same to perpetuate Medi-Cal fraud:

- The complaint specifically pleads mixed claims with detailed factual allegations separating protected conduct (the 2009 proceedings) from unprotected conduct (2014-2021 false statements about non-existent disciplinary actions used to perpetuate widespread Medi-Cal fraud);
- Dr. Peterson preserved the issue by extensively briefing the claim-by-claim requirement in both the district court and court of appeals;
- The Ninth Circuit's decision creates a clear conflict with California Supreme Court precedent; and
- The issue affects thousands of cases filed in federal courts applying state anti-SLAPP statutes as a shield to perpetuate another fraud.

II. The Ninth Circuit's Statute of Limitations Ruling Conflicts with This Court's Precedent on Continuing Violations and Fraudulent Concealment

A. The Continuing Violation Doctrine Applies When New Overt Acts Cause Distinct Injuries

This Court has long recognized that antitrust claims accrue "each time a plaintiff is injured by an act of the defendants," and that "each [conspiracy] act starts the statutory period running again, regardless of the plaintiffs knowledge of the alleged illegality at much earlier times." *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 338 (1971). The Ninth Circuit acknowledged this principle but failed to apply it. The court held that because Dr. Peterson's claims "aris[e] from his 2009 resignation, "the statute of limitations bars everything, "even if he did not know all the reasons for the injury". At that time, neither Dr. Peterson, nor the State of California knew that Sutter was perpetuating a massive Medi-Cal fraud upon Oakland's indigent and underserved Medi-Cal community and retaliating against physicians that refused to participate in the same.

This holding conflicts with *Zenith* in two respects:

First, it treats a continuing antitrust conspiracy as accruing only once-at the first injury-rather than treating each new injury as restarting the limitations period. Dr. Peterson alleged specific overt acts within the limitations period:

- 2017: Denial of provider status with multiple insurance companies based on false MBC statements (SAC ¶¶ 139, 158)

- 2017-2018: Declining reimbursements while Sutter's reimbursements increased due to the kickback scheme (SAC ¶¶ 136, 141)
- December 2019: Direct interference with sale of medical practice through false statements about "ongoing MBC problems" (SAC ¶¶ 349, 358-361)
- 2017-2021: Continued publication of false disciplinary information on MBC website (SAC ¶ 171(5))

Each of these allegations describes a new injury-loss of a contract, denial of provider status, interference with a business transaction caused by new overt acts in furtherance of Sutter's Medi-Cal fraud conspiracy. Under *Zenith*, each such act restarts the limitations period. Consistent with that principle, the California Supreme Court has likewise recognized that when a defendant engages in a series of separate, recurring acts that each inflict a new injury, "each new breach" or wrongful act triggers its own limitations period. *Aryeh v. Canon Bus. Solutions, Inc.*, 55 Cal. 4th 1185,1192-99 (2013).

Second, the decision conflates "injury" with "motive." The court reasoned that even if Dr. Peterson did not discover the kickback motive until 2019-2020, he knew of his "injury" in 2009. But this misunderstands the nature of antitrust and civil rights claims. The injury is not merely "I lost my hospital privileges."

The injury is "Defendants engaged in ongoing anti-competitive conduct that systematically excluded Dr. Peterson from the market and destroyed his practice over many years." When Dr. Peterson lost insurance contracts in 2017 based on false statements about

disciplinary proceedings, that was a new and distinct injury, not merely a continuing effect of a 2009 resignation. Dr. Peterson successfully defended the MBC's actions against him. Nonetheless, the MBC represented that he had "ongoing" medical board issues. What makes matters worse is the underlying reason for Sutter and MBC's conduct — to perpetuate Medi-Cal fraud.

B. Fraudulent Concealment Tolls Limitations When Defendants Hide the Wrongful Nature of Their Conduct

This Court has long held that federal courts borrow the forum State's personal-injury limitations period for § 1983 claims, *see Wilson v. Garcia*, 471 U.S. 261, 280 (1985), but that federal law governs the accrual of those claims. This Court has repeatedly held that fraudulent concealment tolls limitations periods when "the defendant has prevented the plaintiff from discovering his injury." *Bailey v. Glover*, 88 U.S. 342, 349 (1874). In this case, the State of California was conducting private investigations for years before it determined Sutter's Medicare/Medi-Cal fraud.

Here, Dr. Peterson alleged extensive facts showing concealment:

- The *qui tam* whistleblower action alleging Sutter's kickback scheme remained under seal from its filing through 2019-2020;
- Sutter and MBC falsely represented that Dr. Peterson's targeting was based on legitimate quality-of-care concerns, not his refusal to participate in the illegal scheme. The $575 million settlement and admission to 10 years of monitoring were not publicly disclosed until December 2019; and

- Dr. Peterson could not have discovered that the peer review proceedings, MBC investigations, and systematic business interference were all connected to a single illegal scheme until these facts became public

The Ninth Circuit dismissed these allegations with a single sentence: "None of these exceptions apply to Petitioner's claims arising from his 2009 resignation as he clearly knew of his injury then, even if he did not know all the reasons for the injury". App.5a.

This reasoning conflicts with this Court's precedent in at least two respects:

First, it misapplies the "discovery" element by requiring only that the plaintiff know of some injury, rather than requiring knowledge of the wrongful conduct that caused the injury (perpetuating Medi-Cal fraud). Under the fraudulent concealment doctrine, the limitations period does not begin until the plaintiff discovers, or with reasonable diligence should have discovered, "the facts which constitute the fraud or mistake." *Holmberg v. Armbrecht*, 327 U.S. 392 (1946). Here, Dr. Peterson could not discover that Sutter's targeting of him was part of a systematic Medi-Cal fraud scheme until that scheme was reported. It wasn't being reported because the State of California's investigations were private.

Second, the underlying court orders fail to recognize the State of California's investigation as a tolling event. When government authorities investigate alleged misconduct and keep their investigation sealed from public view, private plaintiffs cannot reasonably be expected to discover the same facts. Yet the Ninth Circuit gave no weight to the sealed *qui tam* action.

C. The Decision Creates Practical problems for Antitrust and Civil Rights Enforcement

The Ninth Circuit's approach creates perverse incentives. Under its holding, sophisticated wrongdoers can insulate themselves from liability by:

- Implementing illegal schemes through seemingly legitimate processes (peer review, disciplinary actions);
- Concealing the true motive behind those processes (Medi-Cal fraud);
- Continuing to harm victims through new acts (denial of contracts, interference with business opportunities); and,
- Arguing that because the victim knew of the first injury cases, where conspiracies often operate through subtle market manipulation that victims cannot immediately recognize as unlawful.

III. The Ninth Circuit Misapplied Absolute Immunity by Extending it to Ministerial Acts Outside Quasi-Judicial Proceedings

A. *Mishler* Established Clear Boundaries

The Ninth Circuit's own precedent in *Mishler v. Clift*, 191 F.3d 998 (9th Cir. 1999), established that medical board members enjoy absolute immunity only for quasi-judicial functions, not for ministerial or administrative acts. *Mishler* specifically held that "administrative functions like examining records and sending correspondence are not closely associated with the judicial process and therefore do not receive

absolute immunity. *Id.* at1006. The court distinguished between:

- Protected: Actions taken as part of adjudicatory proceedings or in anticipation of formal adjudication
- Unprotected: Routine administrative responses to inquiries from other agencies or private entities

B. The Ninth Circuit Departed from *Mishler*

Here, Dr. Peterson alleged that MBC Board members made false statements to insurance companies and credentialing committees years after all disciplinary proceedings had concluded (SAC ¶¶ 171(5)-(8), 358-361). These communications:

- Were not made in connection with any pending adjudication;
- Were not made in anticipation of initiating new proceedings;
- Were routine responses to private commercial entities seeking credentialing information; and,
- Occurred 5-12 years after the 2009 proceedings ended and 2-8 years after the 2013 settlement of the B.E. complaint.

The Ninth Circuit dismissed Dr. Peterson's *Mishler* argument with a single paragraph, stating that California law requires MBC members to "publish information about enforcement actions" and "correct those disclosures when new information becomes available". This reasoning misses the point. Dr. Peterson does not challenge the Board's authority to publish information.

He challenges the Board's knowing publication of false information-specifically, statements that he had ongoing investigations when no such investigations existed.

Moreover, the court's reliance on California's disclosure requirements contradicts *Mishler's* holding. If state law requiring disclosure of information automatically converts ministerial responses into quasi-judicial functions entitled to absolute immunity, then Mishler was wrongly decided. Nevada law similarly required its medical board to respond to inquiries, yet the Ninth Circuit held those responses were not protected.

C. The Decision Conflicts with General Immunity Principles

This Court has repeatedly emphasized that absolute immunity is "narrowly confined", applicable only when "essential for the conduct of the public business." *Forrester v. White*, 484 U.S. 219 (1988); *Tenney v. Brandhove*, 341 U.S. 367 (1951); *Pierson v. Ray*, 386 U.S. 547 (1967). Absolute immunity is the exception.

The Ninth Circuit's expansion of absolute immunity to routine correspondence with private insurance companies conflicts with this principle. Other circuits have been more faithful to the court's functional approach. In *Morgan v. Chapman*, 969 F.3d 238 (5th Cir. 2020), the Fifth Circuit held that a state medical board investigator who coordinated with law enforcement, searched a physician's clinics, and allegedly fabricated evidence was not entitled to absolute quasi-judicial immunity because those activities were investigatory, not adjudicative. *Morgan* thus rejects the notion that medical-board personnel are absolutely immune whenever a board is involved, and instead limits absolute

immunity to functions "closely associated with the judicial process." The Ninth Circuit's decision here does the opposite, extending absolute immunity to years-later, extra-judicial communications to insurers and credentialing entities that are, at most, ministerial or investigative in nature. Here, when government officials make false statements to third parties years after any official proceeding has ended, they are not performing judicial function. They are engaged in ordinary administrative work that, if done negligently or maliciously, should be subject to qualified immunity analysis, not absolute immunity.

IV. The Ninth Circuit Erred in Affirming Dismissal with Prejudice of Claims Over Which the District Court Lacked Jurisdiction

A. *Freeman* Requires Dismissal Without Prejudice

This Court and the Ninth Circuit have consistently held that when a federal court dismisses claims for lack of subject matter jurisdiction, the dismissal must be without prejudice to allow the plaintiff to pursue available remedies in state court. In *Freeman v. Oakland Unified School District*, 179 F.3d 846, 847 (9th Cir. 1999), the court squarely held: "If jurisdiction is lacking, the case must be dismissed. Such a dismissal, being for lack of jurisdiction, is without prejudice". So why was it dismissed with prejudice?

Here, the District Court dismissed Dr. Peterson's contract claims against the MBC based on Eleventh Amendment sovereign immunity. But the court dismissed those claims with prejudice, effectively barring Dr. Peterson from pursuing them in California state

court where jurisdiction was proper. Dr. Peterson raised this issue in his petition for rehearing, and even Respondents conceded the error. Yet the Ninth Circuit's memorandum disposition does not address the issue, effectively affirming the erroneous dismissal with prejudice. The legal impact is that Dr. Peterson was denied due process — he has no remedy for the breach.

B. The Error Is Not Harmless

This error is not harmless. California has waived its sovereign immunity for contract claims through Cal. Gov't Code § 815. Dr. Peterson could pursue his contract claims in California state court if the federal dismissal were without prejudice. By affirming dismissal with prejudice, the Ninth Circuit has effectively eliminated Dr. Peterson's contract remedies entirely, even though California law provides for that remedy. This violates basic principles of federalism and comity.

V. The Case Presents Issues of Exceptional Importance

Beyond the specific legal errors, this case presents issues of exceptional importance warranting this Court's review:

A. Systematic Exclusion of Minority Physicians

Dr. Peterson is an African American physician. He serves predominantly minority and indigent patients in Oakland and alleges systematic discrimination through abuse of peer review and disciplinary processes. It is undisputed that the California Research Bureau has found MBC disciplinary process is discriminatory against African American and Hispanic physicians. SAC ¶ 137. If peer review processes can be

weaponized to exclude minority physicians and then shielded from judicial review through the overbroad application of immunity doctrines and anti-SLAPP statutes, vulnerable populations will lose access not only to the legal process, but also to medical care. When this occurs, people suffer – some die.

B. Medi-Cal Fraud

Medi-Cal is funded largely from Medicaid. This case involves the wholesale theft from Medi-Cal by Sutter which uses up-coding to unlawfully inflate its medical bills. When Dr. Peterson was asked to participate and refused, he suffered severe professional retaliation. He did the prudent thing by refusing to participate. The legal system failed him. Not only was he damaged, Oakland's indigent and underserved Medi-Cal patients suffered. The wholesale refusal to allow him to fairly adjudicate his claims discourages others physicians to do the right thing. Allowing these rulings to stand will encourage other physicians to participate in Sutter's Medi-Cal fraud.

C. Healthcare Market Consolidation and antitrust Enforcement

Sutter's alleged Medi-Cal scheme represents exactly the type of anticompetitive conduct that federal antitrust laws were designed to prevent:

- Up-code its Medi-Cal bill to fraudulently inflate healthcare services provided to indigent and underserved patients;
- Pay kickbacks to physicians to steer patients;
- Control physician disciplinary boards to eliminate competitors and perpetuate Medi-Cal fraud;

- Make false statements to insurance companies to prevent competitors or whistleblowers from obtaining contracts; and
- Conceal the scheme for over a decade and then escape liability by arguing the statute of limitations expired before the scheme was discovered. The effectiveness of antitrust and civil rights enforcement are severely undermined.

D. Federal Civil Rights Enforcement

The decision below significantly restricts the ability of civil rights plaintiffs to pursue § 1983 claims when:

- Defendants conceal their discriminatory motive;
- Defendants commit continuing violations over many years;
- Government investigations remain sealed; and,
- New injuries occur within the limitations period.

E. Violation of Dr. Peterson's Due Process Right

In this case, the lower courts failed to follow required procedures and governing law, thus depriving Dr. Peterson due process. The rulings were patently incorrect calling into question judicial bias and arbitrary action. Clearly, the constitutional and § 1983 claims override California's Anti-SLAPP statute. Under Fed. R. Civ. Proc. 12(b)(6), a court must accept the complaint's well-pleaded factual allegations as true and draw reasonable inferences in the pleader's favor. That did not

occur. Likewise, dismissal under the Eleventh Amendment should have been without prejudice. The Court agreed, but did not correct its error. These errors are troubling when considered in the context of widespread Medi-Cal fraud by Northern California's largest healthcare provider.

This case has far-reaching implications for Medicare/Medi-Cal fraud, discrimination against indigent and underserved patients and their physicians, because Sutter used the MBC to perpetuate its fraud. Not only did an honest physician suffer, Oakland's indigent and underserved Medi-Cal patients suffered the misuse of funds designated for their healthcare.

Sutter and the MBC should not be rewarded for obviously unlawful conduct.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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