NO. 25-6441

IN THE SUPREME COURT OF THE UNITED STATES

KAMLESH BANGA

Petitioner

vs.

LAWRENCE R. LUSTIG, M.D.

Respondent

RESPONDENT'S BRIEF IN OPPOSITION TO PETITIONER'S WRIT OF CERTIORARI TO REVIEW A JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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COUNTER-STATEMENT OF THE QUESTION PRESENTED

Whether a district court violates 28 U.S.C. §636(b)(1)(C) and Article III when it conducts a de novo determination and adopts some, but not all, of a magistrate judge's recommendations and, although not required to at all, briefly and generally responds to a party's untimely objection in doing so.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. USCS Supreme Court Rule 10. Considerations Governing Review on Certiorari

   Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

   (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

   (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

   (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be,

settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

2. 28 USCS §636(b)(1)(B) and 28 USCS §636(b)(1)(C) Jurisdiction, Powers and Temporary Assignment.

(b)

(1) Notwithstanding any provision of law to the contrary—

(A) a judge may designate a magistrate [magistrate judge] to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's [magistrate judge's] order is clearly erroneous or contrary to law.

(B) a judge may also designate a magistrate [magistrate judge] to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a

judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial [post-trial] relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

(C) the magistrate [magistrate judge] shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [magistrate judge]. The judge may also receive further evidence or recommit the matter to the magistrate [magistrate judge] with instructions.

SUMMARY OF RESPONDENT'S ARGUMENT

The subject petition should be denied because Petitioner has not presented any compelling reason for the Court to grant the petition. There is no split decision among the U.S. Court of Appeals. Rather this matter involves the decision of a single district court which granted Respondent's motion to dismiss, which decision was upheld by a single appellate court, the Second Circuit, (except as to one cause of action regarding supplemental jurisdiction, which was reversed.)

Further, there is also no important federal question presented in this matter which would justify granting the petition.

Petitioner is simply dissatisfied with the district court's decision and the Second Circuit's partial affirmation and partial reversal of that decision which has left her with only one claim in the district court action.

The District Court's Opinion and Order shows that the district court did not simply adopt the Magistrate Judge's Report and Recommendation ("the Report"), through "judicial silence" as argued by Petitioner, but rather shows that the district court judge performed the de novo determination required by 28 U.S.C §636(b)(1)(C) and adopted most, but not all, of the Magistrate Judge's Report. Pet. App. A, 010-021. The district court did not simply rubber-stamp the Report, adopting it wholesale; the district court performed the *de novo* review (determination) required by 28 U.S.C §636(b)(1)(C).

Petitioner's untimely objections filed on November 20, 2023 did not need to be considered by the district court. However, to be complete, the district court did

review Petitioner's untimely objections *de novo* and found that they did not disturb the Report's conclusions. Pet. App. A, 019.

Thus, the final determination on Respondent's motion to dismiss was made by the district court, not the magistrate judge, and therefore Petitioner was not denied de novo determination by an Article III judge.

Additionally, there is no *Erie* violation by the district court in this matter as neither of the California appellate court cases cited by Petitioner, *Banga I* and *Banga I,* had before it the issue of whether or not Petitioner's claim for violation of California Business & Professions Code §17200 ("the §17200 claim"), was barred by the statute of limitations. Pet. App. E, 039 and 041; Pet. App. F, 046-047 and 049.

Further, the cases cited by Petitioner in discussion regarding congressionally mandated standards of review do not assist Petitioner as they do not involve the application of 28 U.S.C §636(b)(1)(C) or do not support Respondent's position in this matter.

Petitioner's petition for a writ of certiorari herein is simply Petitioner's latest attempt to revive a time-barred claim which she initially brought against Respondent in 2020 when she named him as a defendant in her Second Amended Complaint in a case she had filed in California in 2016. This improper goal cannot be the basis for a grant of certiorari. Therefore, the petition must be denied.

I. STATEMENT OF RELEVANT FACTS

As admitted by Petitioner in her statement of facts in support of this petition, in January 2016, she filed a lawsuit in California Superior Court against several

defendants arising from defendants' alleged concealment of audiological testing data from Petitioner's medical records. Pet. 2. In 2020, Petitioner filed a Second Amended Complaint in the California action alleging causes of action for breach of contract, fraudulent concealment of medical records, intentional alteration of medical records, intentional infliction of emotional distress, violation of Business & Professions Code §17200 et seq. (Unfair Competition Law) (the §17200 claim), and Violation of Health & Safety Code §123100-123200 and naming Respondent herein, Lawrence R. Lustig, M.D., as a defendant. Pet. 4.

Also as admitted by Petitioner, defendants' demurrer to the tort causes of action in the California case was sustained without leave to amend and in 2021 Petitioner "withdrew" (dismissed) her two remaining statutory causes of action and pursued an appeal of the trial court's dismissal of the four tort causes of action. Pet. 4. The California appellate court affirmed the trial court's dismissal of the tort claims. Pet. 4.

After losing in the California courts, on November 17, 2022, Petitioner filed yet another lawsuit against Respondent in the United States District Court for the Southern District of New York, Case No. 1:22-cv-09825-PAE-SN. Pet. 5. The federal complaint against Respondent again included the §17200 claim. Pet. 5.

On May 18, 2023 Respondent filed a motion to dismiss the federal complaint on the grounds that the Petitioner's causes of action were barred by res judicata as they had been litigated in the California action and/or were time-barred. Pet. 5 and Document 36 of the docket.

The motion was referred by the district court to Magistrate Judge Sarah Netburn for review and recommendation. On October 30, 2023, Magistrate Judge Netburn issued her Report and Recommendation ("the Report"), which properly determined that Petitioner's §17200 claim was time-barred and not saved by the "continuing wrong" doctrine. Pet. App. D, 031-033. In the Report the magistrate judge also recommended dismissal of all of Petitioner's claims. Pet. App. D, 034-035.

On November 12, 2023, Petitioner filed timely objections to the Report. Pet. 7.

On November 20, 2023, Petitioner filed untimely "amended" objections to the Report. Pet. 7. Included in the untimely objections was Petitioner's Objection No. 3, which stated:

> "Magistrate Judge Abused Her Discretion By Overlooking Factual Allegations of Paragraphs 44, 45, 47 of the RFAC and Evidence Concerning Defendant's Violation of Bus. & Prof. Code §17200 Et Seq." Pet. 7 - 9.

Petitioner states that her untimely Objection No. 3 "challenged the magistrate's UCL [§17200 claim] statute of limitations analysis as legally erroneous and factually incomplete." Pet. 7-9.

On December 20, 2023, in its 12-page Opinion and Order ("Order"), regarding Respondent's motion to dismiss, the district court adopted the recommendations in the Report that all of Petitioner's causes of action should be dismissed, except for the Report's recommendation to dismiss Petitioner's claim for violation of California

Health & Safety Code §123110, over which the district court declined to extend supplemental jurisdiction. Pet. App. C, 021. In the Order, although not required to, the district court stated it had reviewed Petitioner's untimely objections to the Report and determined that they did not disturb the Report's conclusions. Pet. App. C, 019.

Petitioner appealed the district court's Order and on September 11, 2025, the Second Circuit issued its Summary Order, affirming most of the district court's decision, including the dismissal of Petitioner's §17200 claim as time-barred, but vacating the dismissal of her claim under California Health & Safety Code §123110 for lack of jurisdiction. Pet. App. A, 005-006, and 008. That claim was remanded to the District Court for further proceedings. Pet. App. A, 008. It is the single claim left in Petitioner's action against Respondent in the district court.

II. ARGUMENT

A. Petitioner Has Failed to Present Any Compelling Reason Why Her Petition Should be Granted.

As stated in USCS Supreme Court Rule 10 ("Rule 10"), "a petition for a writ of certiorari will be granted only for compelling reasons," and review on a writ of certiorari is a matter of judicial discretion, not a matter of right. Examples of appropriate reasons for granting a writ of certiorari, as enunciated in Rule 10 are:

a) A United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far

departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

b) A state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

c) A state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

It is noted in Rule 10 that: "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."

Petitioner has not presented any facts supporting any of the above reasons in her petition. Petitioner does not assert that there is a split in the decisions of United States courts of appeals regarding this matter. Nor does she claim that a United States court of appeals has decided an important federal question in a way that conflicts with a decision by a state court of last resort. Further, Petitioner does not claim that a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United Sates court of appeals. Finally, this petition does not involve a decision by a state court or a United States court of appeals on an important question of federal

law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decision of this Court.

Instead, this petition only presents Petitioner's dissatisfaction with the alleged failure of a single district court to review de novo one of her "amended" objections, (Objection No. 3 regarding her §17200 claim), to the Report. Pet. 7 and 10.

However, the subject objection was untimely and therefore the district court was not required to review that objection de novo. The Report was issued on October 30, 2023. Pet. App. D, 022-035. Pursuant to 28 U.S.C. §636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, Petitioner had fourteen (14) days from service of the Report, so on or before November 13, 2023, to file any written objections to it. Petitioner did file timely objections on November 12, 2023. Pet. 7.

Over one week later, on November 20, 2023 filed "amended" objections to the Report, which included her Objection No. 3 which is the basis for this petition. Pet. 7 - 9. As Petitioner's "amended" objections were filed twenty-one (21) days after the Report was issued, they were untimely.

As stated in 28 U.S.C. §636(b)(1)(C) a district judge is only required to make a de novo determination of *timely* objections, not untimely ones. Therefore, it was not a violation of 28 U.S.C. §636(b)(1)(C) for the District Court to fail to make a de novo review of Petitioner's Objection No. 3 contained in her "amended" objections.

Petitioner's dissatisfaction with the lower court's alleged lack of review of Objection No. 3 does not present a split decision of United States courts of appeals, or an important federal question or federal law. Accordingly, there is no compelling reason to grant the petition for a writ of certiorari and therefore it should be denied.

B. The District Court Did Not Fail to Conduct a De Novo Determination of Petitioner's Timely Objections.

Petitioner's assertion that the district court improperly adopted the magistrate judge's recommendations through "complete judicial silence" (Pet. 11.), is patently incorrect, as a review of the district court's Order reveals. In discussing the applicable legal standards in his 12-page Order, the district court first noted that, pursuant to 28 U.S.C §636(b)(1)(C), in reviewing a magistrate judge's Report and Recommendations, ite may "accept, reject or modify" in whole or in part, the findings or recommendations made by the magistrate judge. Pet's App. C, 014.

The district court also acknowledged its duty under Fed. R. Civ. P. 72(b)(3) to make a de novo determination regarding any part of the magistrate judge's disposition to which specific, timely objections are made. Pet. App. C, 014-015. The district court then proceeded in the Order, to analyze Petitioner's timely objections. And, in the course of that analysis, the district court concluded that Petitioner's limited objection to the Report that her claim for Violation of California Health & Safety Code §123110 was not time-barred and had merit. Pet. App. C, 017-018.

Thus, the content of the Order shows that the district court did not simply adopt the Report through "judicial silence," but rather performed the de novo determination required by 28 U.S.C §636(b)(1)(C) and adopted most, but not all, of

the Report. This was not simply a rubber-stamp adoption of the Report, the district court performed the *de novo* review required. Just because Petitioner disagrees with the District Court's decision does not create a compelling reason for this Court to grant this petition for certiorari.

Further, as noted in the Order, because Petitioner's objections filed on November 20, 2023 were untimely, they need not be considered by the district court. *Henry v. Miller*, No. 11 Civ. 1273 (PAE) (SLC), 2019 WL 6038090, at *1 (S.D.N.Y. Nov. 14, 2019.) However, in order to be complete, the district court stated it did review Petitioner's untimely objections *de novo* and found that they did not disturb the Report's conclusions. Pet. App. C, 019.

Accordingly, Petitioner's argument that that the district court improperly adopted the magistrate judge's recommendations through "complete judicial silence" is not supported by the record and cannot be the basis for granting the petition.

C. The Second Circuit Upheld the District Court's Dismissal of Petitioner's §17200 Claim.

In July 2025 the Second Circuit issued its decision regarding Petitioner's appeal of the District Court's decision, and stated, regarding the §17200 Claim:

> "The district court did not err in dismissing as untimely Banga's claim under California Business & Professions Code §17200, notwithstanding Banga's alleged March 2020 request for medical records. Under California law, a claim under the Unfair Competition Law must be brought within four years of accrual. *See* Cal. Bus. & Prof. §17200. California applies "the traditional last element rule" to determine when such claims accrue. *Aryeh v. Canon*

Bus. Sols., *Inc.*, 292 P.3d 871, 876 (Cal. 2013). Under this rule, a claim accrues "when it is complete with all of its elements." *Id*. at 875 (internal quotation marks and alteration omitted). Here, all elements of Banga's §17200 claim were complete by December 2014, when she settled her underlying lawsuit on unfavorable terms due to Lustig's alleged failure to provide her medical records. *See Kwikset Corp. v. Superior Ct*., 246 P.3d 877, 887 (Cal. 2011) (requiring that the "unfair competition" caused an "economic injury" to sufficiently plead a claim). Her subsequent March 2020 request for the same records she had been denied in 2014 did not restart the limitations period, particularly in the absence of plausible allegations attributing an economic injury to the non-fulfillment of that request. Neither the continuous accrual doctrine nor the continuous violation doctrine applies here because Banga was requesting the same medical records previously denied - not suffering a separate or ongoing violation – and she was aware the denials warranted action when she had to settle her lawsuit in 2014. Accordingly, Banga's §17200 claim was time-barred when filed in 2022." Pet. App. A, 005-006.

Thus, the district court's adoption of the magistrate judge's Report dismissing Petitioner's §17200 claim was legally correct and d

id not violate 28 U.S.C. §626(b)(1)(C).

D. Petitioner's Argument that this Case Involves a Constitutional Matter Also Fails.

Petitioner also argues that she was deprived of her Constitutional right to have her objection to the magistrate's Report decided by an Article III judge. This argument is not supported by the applicable law and facts and documents provided in her own petition and therefore creates no grounds for the granting of this petition.

It has been stated that:

"One of the prime purposes of the Federal Magistrates Act, P.L. 90-578 (codified in 28 U.S.C. §§ 631-38 and various sections of 18 U.S.C.), was 'to cull from the ever-growing workload of the U.S. district courts matters that are more desirably performed by a lower tier of judicial officers.' Legislative History 1968 U.S.Cong. & Adm.News, p. 4255." *United States v. Richardson*, (1972 ED NY) 57 F.R.D 196, 197.

Further, the relevant text of 28 USCS §636(b)(1)(B) states:

(b)

(1) Notwithstanding any provision of law to the contrary—

(A) *a judge may designate a magistrate [magistrate judge] to hear and determine any pretrial matter pending before the court, except* a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, *to dismiss for failure to state a claim upon which relief can be*

granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's [magistrate judge's] order is clearly erroneous or contrary to law.

(B) a judge may also designate a magistrate [magistrate judge] to conduct hearings, including evidentiary hearings, *and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A)*, of applications for posttrial [post-trial] relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement. (Emphasis added.)

As allowed by the statute, the record shows that the district court properly culled an appropriate matter in this case from its workload, and referred Respondent's motion to dismiss to Magistrate Judge Sarah Netburn for the preparation of a Report and Recommendation regarding that motion.

On October 30, 2023 the magistrate judge complied with the district court's referral and issued her Report. In the 14-page Report, Judge Netburn discussed in detail all of the seven claims set forth in Petitioner's RFAC, including Petitioner's §17200 claim. Pet. App. D, 022-035.

In the Report, the magistrate judge analyzed the claim and recommended that the §17200 claim should be dismissed, without leave to amend, because:

1) This claim is barred by the four-year statute of limitations set forth in Bus. & Prof. §17208 because, as alleged by Plaintiff, the cause of action accrued in 2014 when she was harmed at that time in her personal injury settlement and by being required to undergo unnecessary ABR testing at that time. Pet. App. D, 032.
2) Plaintiff's voluntarily dismissal of the §17200 claim in the prior action she filed in 2016 does not toll the statute of limitations. Pet. App. D, 033.
3) Plaintiff's argument that Respondent is committing a "continuing wrong" and that the statute of limitations has not yet started to run because she has not yet been provided with the April 2012 and October 2013 testing data is incorrect. The "continuing wrong" doctrine only applies to torts, not statutory violations such as the §17200 claim. Also, it would not make sense in these claims seeking injunctive relief for the statute of limitations to only start to run "when the tortious acts cease" or when Defendant provides Plaintiff with the outstanding data, as there would no longer be a need for injunctive relief. Pet. App. D, 033.

On December 20, 2023, the district court issued its Order in which it noted that, pursuant to 28 U.S.C. §636(b)(1)(C), in reviewing a Report, it was entitled to accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. Pet. App. C, 014. Judge Engelmayer then proceeded to discuss Petitioner's objections to the report over the course of the course of several pages. Rather than adopting the Report's recommendation that all of Petitioner's

claims should be dismissed, the district court determined that one of her statutory claims was timely, although the district court declined to exercise supplemental jurisdiction over that claim. Pet's App. C, 010-021.

The district court in this matter did *not* simply issue a one-line Order stating that it was adopting wholesale the findings in the Report. The contents of the Order shows that the district court, did, in his position as an Article III district court judge, perform the de novo determination of this matter required of him by 28 U.S.C. §636(b)(1)(C). Thus, there is no basis for Petitioner's argument that petition should be granted on the grounds that she was denied a de novo determination by an Article III judge. Simply because she disagrees with the conclusions reached in the magistrate judge's Report and the district court's Order regarding her §17200 claim does not justify the Court granting review of this matter.

This Court's decision in United States v. Raddatz 447 U.S. 667 (1980), cited by Petitioner, actually supports Respondent's position on this issue. In that case, the Court held:

> "The legislative history discloses that Congress purposefully used the word determination rather than hearing, believing that Art. III was satisfied if the ultimate adjudicatory determination was reserved to the district court judge. And, *in providing for a "de novo determination" rather than de novo hearing, Congress intended to permit whatever reliance a district judge, in the exercise of sound judicial discretion, chose to place on a magistrate's proposed findings*

and recommendations." (*Id*. at 676, citing *Mathews v. Weber,* 423 U.S. 261, 275 (1976), emphasis added.)

Here, the ultimate adjudicatory determination regarding Petitioner's §17200 claim was performed by a district court judge, using his sound judicial discretion.

E. There is no Erie Doctrine Violation in This Matter.

Petitioner also claims that the district court ignored "controlling" California authority regarding the availability of UCL remedies (her §17200 claim), as set forth in two appeals in her prior California case, *Banga I* and *Banga II*. Pet. 23. Petitioner is once again incorrect.

In its decision in *Banga I* the California Court of Appeal did *not* determine that Petitioner had successfully plead a §17200 claim. Rather, the appellate court stated that "Banga may be able to base an unfair competition claim on the Regent's violation of section 123110." The appellate court further stated, "To be clear, we do not hold that Banga can successfully plead an unlawful competition claim, but that she should be given an opportunity to do so. Pet. App. E, 041.

In *Banga II,* the appellate court noted that, prior to that appeal being filed, that Petitioner had dismissed her sixth cause of action alleging the §17200 claim. Pet. App. F, 046-047. The *Banga II* court briefly discussed the *Banga I* court's decision regarding Banga's Health & Safety §123120 (sic) claim and her potential remedy under §17200 but specifically stated: "However Banga voluntarily dismissed those statutory claims, which she pled after remand, and they are *not* before us on this appeal." Pet. App. F, 049, emphasis in original.

As the *Banga II* court clarified that Petitioner's statutory claims were not before it on that appeal, there is no California case precedent arising from that appellate decision which the district court was required to follow in making its de novo determination regarding Petitioner's objections to the Report.

Therefore, the district court did not violate the holding in *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938) in this case as neither *Banga I* nor *Banga II* provided any controlling precedent regarding Petitioner's §17200 claim.

F. Petitioner's Citation to Cases Regarding Standards of Review Are Inapplicable.

Petitioner cites *Chandler v. Roudebush,* 425 U.S. 840 (1976) for the proposition that by specifying review de novo, Congress denied the district court discretion to consider the case in any other manner. The *Chandler* case is inapplicable to this petition as it did not involve a de novo determination under 28 U.S.C. §636(b)(1)(C), but rather involved a federal employee's action against her federal employer, which was brought under § 717(c), 42 U.S.C.S. § 2000e-16(c), of the Civil Rights Act of 1964 (Act), 42 U.S.C.S. § 2000e et seq. The employee sought review of the judgment of the United States Court of Appeals for the Ninth Circuit, which held that she was not entitled to discovery because the review of her claim was limited to the administrative record.

Similarly, Petitioner's citation to *United States v. First City National Bank* 386 U.S. 361 (1967), is also inapplicable as it involved the dismissal of two civil antitrust suits brought by the federal government under the Clayton Act, 15 U.S.C.S. § 18, to prevent two bank mergers. There is no discussion of what

constitutes the de novo determination required by 28 U.S.C. §636(b)(1)(C) in that case.

III. CONCLUSION

For the foregoing reasons, the petition for writ of certiorari must be denied.

Dated: March 27, 2026

RANKIN, SHUEY, MINTZ,
LAMPASONA & HARPER

By: 
DAVID T. SHUEY
Attorneys for Respondent
LAWRENCE R. LUSTIG, M.D.

PROOF OF SERVICE
Banga vs. Lustig, et al.
Case No. 1:22-cv-09825-PAE-SN

I am a resident of the State of California, over 18 years of age and not a party to the within action. I am employed in the County of Alameda; my business address is: 2030 Franklin Street, Sixth Floor, Oakland, CA 94612. On March 27, 2026, I served the within:

RESPONDENT'S BRIEF IN OPPOSITION TO PETITIONER'S WRIT OF CERTIORARI TO REVIEW A JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

on all parties in this action, as addressed below, by causing a true copy thereof to be distributed as follows:

Plaintiff, KAMLESH BANGA, *In Pro Per*:

Kamlesh Banga
P. O. Box 5656
Vallejo, CA 94591
(707) 342-1692
Email: kkbanga@gmail.com

√ By United States Mail: I enclosed the document in a sealed envelope or package addressed to the persons at the addresses listed above and placed the envelope/package for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing documents for mailing. On the same day that the document is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Oakland, California.

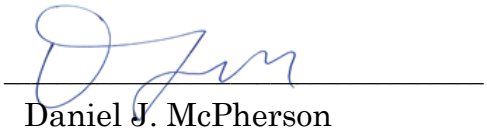
☐ By E-Mail: Based on a court order or an agreement of the parties to accept service by email or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

√ BY ELECTRONIC TRANSMISSION. I served the document(s) to the persons at the e-mail address(es) listed above. The email addresses listed above have been confirmed to be correct prior to transmission. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

☐ Electronic Transmission/Filing: Electronic Filing and Service of Pleadings to all parties on the 'Lexis-Nexis' file and serve service list. The transmission was reported complete and without error.

√ ***(FEDERAL)*** I declare under the laws of the United States of America that I am employed in the office of a member of the Bar of this court at whose direction the service was made and that the foregoing is true and correct.

Executed on March 27, 2026 at Oakland, California.



Daniel J. McPherson