NO. 25-6441

IN THE SUPREME COURT OF THE UNITED STATES

KAMLESH BANGA

Petitioner

vs.

LAWRENCE R. LUSTIG, M.D.

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO REVIEW A JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF OF PETITIONER

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PRELIMINARY STATEMENT

Petitioner Kamlesh Banga respectfully submits this reply in further support of her petition for a writ of certiorari, solely in response to Respondent's brief, and does not add any factual material or argument.

Respondent acknowledges at page 3 of his brief that "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." As established in Section A, the UCL objection was timely filed. Petitioner was therefore constitutionally entitled to an independent determination of her timely UCL objection by an Article III judge. Because jurisdiction over this case was vested in an Article III federal district court, Petitioner was entitled to the constitutional safeguards of that forum. When Congress exercises a specific legislative power, its power to supplant independent Article III courts with legislative tribunals is limited by the strictures of Article III and the special role of the independent judiciary under the Constitution. United States ex rel. *Toth v. Quarles*, 350 U.S. 11, 15-16 (1955); *Reid v. Covert*, 354 U.S. 1, 21-22, 44, 70 (1957). The district court's silence on Petitioner's timely UCL objection was not a procedural irregularity. It was a constitutional deprivation that Petitioner was entitled to have remedied. The reasons set forth below compel the granting of the writ.

A. Respondent Concedes That De Novo Review Is Mandatory Upon Timely Objections

Respondent candidly acknowledges that Petitioner filed timely objections on November 12, 2023. He nonetheless argues that "the district court was not required to review that objection de novo" because the "amended" objections, which included Objection No. 3, were untimely. That justification rests on Respondent's false statement of fact.

Respondent constructs that argument as follows:

> "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." Respondent Brief at 10.

1. The UCL Objection Was Timely Raised on November 12, 2023.

Despite acknowledging that "Petitioner did file timely objections on November 12, 2023," Resp. Br. 7, Respondent misrepresented to this Court that "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." Resp. Br. 10.

As set forth below, the verbatim text of Objection No. 4 of Dkt. 59, BANGA-APP-072, confirms that representation was false when made.

OBJECTION NO. 4

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.

Paragraph 39 of the complaint alleges that on June 7, 2017, Plaintiff appealed a February 15, 2017 Superior Court judgment seeking to enforce her right to access her medical records and pursue the Section 17200 claim. **[ECF 26, pg. 9:25-26] On October 1, 2019, the Court of Appeal held in relevant part that o**n remand, Banga may also be able to plead a claim under the Unfair Competition Law. (Bus. & Prof. Code, § 17200.)

"Unfair competition claims may be based on violations of other statutes, including state laws that govern information-sharing practices. (See Cisneros v. U.D. Registry, Inc. (1995) 39 Cal.App.4th 548, 563-564 [violations of credit and consumer reporting laws].) A single unfair or unlawful act may suffice. (Klein v. Earth Elements, Inc. (1997) 59 Cal.App.4th 965, 968, fn. 3.) Injunctive relief-e.g., an order to produce the medical records-is available (see Bus. & Prof. Code, § 17203), and the limitations period is four years. (See Bus. & Prof. Code, § 17208; Cortez v. Purolator Air Filtration Products Co. (2000) 23 Cal.4th 163, 178-179 [four-year limitations period usually applies even if claim is based on violation of statute with shorter limitations period]).

Here, Banga may be able to base an unfair competition claim on the Regent's violation of section 123110. Indeed, she arguably did so in her first amended complaint. She alleges a violation of Business and Professions Code section 17200, including allegations that she requested copies of her patient records and the Regents failed to provide them, although she appears to allege that this is a violation of the Regent's policies rather than the Health and Safety Code. In her prayer, she does not specify relief available under Business and Professions Code section 17200, such as restitution or an injunction, but she does request "other relief as the Court deems proper." On remand she may revisit the remedies in a second amended complaint.

The Regents suggest that Banga cannot establish standing because she has not suffered any loss of money or property. 2 (See Bus. & Prof. Code, § 17204 [limiting relief to persons who have lost money or property].) However, Banga may have standing by alleging she paid $2, 177.46 for the October 2013 tests and did not receive the full benefit of her bargain. (See *Kwikset Corp. v. Superior Court,* supra, 51 Cal.4th at p. 323 ["There are innumerable ways in which economic injury from unfair competition may be shown."].) She may be able to allege other costs caused by the Regents' refusal to provide the underlying test data, such as the cost of additional tests that she obtained at Stanford.

The Regents confuse standing with eligibility for restitution. It is irrelevant whether an economic injury posited for standing can be remedied by an award of restitution. (*Kwikset Corp. v. Superior Court (2011*) 51 Cal.4th 310, 335-336.) To be clear, we do not hold that Banga can successfully plead an unlawful competition claim, but she should be given an opportunity to do so."

Paragraph 43 alleges that on February 24, 2020, the Court issued an Order Sustaining Defendants' Demurrers to Plaintiff's First Amended Complaint with Leave to Amend and permitted Plaintiff to file a second amended complaint within 20 days of the Order.

Paragraph 44 alleges that pursuant to the Court of Appeal's decision, Plaintiff directly requested Defendant Lusting to provide a complete copy of her ABR Testing of April 6, 2012 and October 7, 2013.

Paragraph 45 of the complaint alleges that on March 16, 2020, Plaintiff filed a Second Amended Complaint. On October 15, 2020, Defendant Lustig, jointly represented by counsel, filed a verified Answer admitting to not intentionally violating Business and Professions Code Section 17200. Specifically, Defendant Lustig stated in his jointly filed Answer:

AS A TENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, to the Plaintiffs Third Amended Complaint, these answering Defendants assert they have not committed any unlawful, unfair or fraudulent business act or practice and, as such, there are no remedies available to Plaintiff.

> AS AN ELEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, to the Plaintiffs Third Amended Complaint, these answering Defendants assert they have not intentionally committed any unlawful, unfair or fraudulent business act or practice and, as such, there are no remedies available to Plaintiff.

That objection, quoted verbatim above from Dkt. 59, was in the record on November 12, 2023, 13 days after the October 30, 2023 Report and within the fourteen-day period section 636(b)(1)(C) prescribes.

2. Respondent's Personal Knowledge of the Timely Filing Exposes a Knowing Misrepresentation Designed to Mislead This Court.

As established in Section 1, the UCL objection was timely raised within the fourteen-day period section 636(b)(1)(C) prescribes. ECF No. 61 carried over the UCL objection without alteration and did not supersede ECF No. 59. [Verbatim Objection No. 3, Dkt. 61, BANGA-APP-075, 76:4-78:22.] The district court's own order confirms the filing: "On November 12, 2023, Banga timely objected, and submitted a declaration in support. Dkts. 59 (Pl. Obj.), 60." Pet. App. C, 010. The district court further states: "Lustig never filed a response." Pet. App. C, 010. Because the UCL objection was timely, Respondent's own concession controls: "**a district judge is only required to make a de novo determination of timely objections, not untimely ones**." Resp. Br. 10 (emphasis added).

That timely filing triggered the district court's mandatory duty to "make a de novo determination of those portions of the [magistrate's] report or specified proposed findings or recommendations to which objection [was] made." 28 U.S.C. §636(b)(1)(C). By failing to conduct de novo review, the district court violated Petitioner's constitutional right to an independent determination of contested issues by an Article III judge, as guaranteed by Article III, Section 1 of the United States Constitution.

3. Under Mathews v. Weber, De Novo Review Was Mandatory And The District Court's Failure Was a Statutory Violation.

In *Mathews v. Weber*, 423 U.S. 261, 274 (1976), this Court recognized that where all evidence before the magistrate is accessible to the judge, the judge can evaluate the quality of the magistrate's report and make an independent determination of contested issues. The district court had full access to the record. Pet. App. C, 010. That timely UCL objection triggered the district court's duty under section 636(b)(1)(C) to make that independent determination. The district court did not. That omission was a statutory violation.

Petitioner's interest in *de novo* review was not a preference but a constitutional right secured by statute and guaranteed by Article III, Section 1 of the United States Constitution. As the First Circuit recognized in *United States v. Edwards*, 602 F.2d 458, 466-467 (1st Cir. 1979), section 636(b)(1)(C) directs that where any party objects to any aspect of the magistrate's report, a judge of the court shall make a de novo determination of those portions to which objection is made. The district court's silence confirms that obligation was never discharged.

B. The District Court's De Novo Review Of The Section 23110 Objection Does Not Discharge Its Duty With Respect To The UCL Claim

Respondent argues in Section B that the district court conducted *de novo* review of the section 123110 objection, but cites nothing showing the district court discharged its mandatory duty under section 636(b)(1)(C) with respect to the UCL claim.

Section 636(b)(1)(C) of the Federal Magistrates Act required the district judge to "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." That obligation runs to each timely objection independently. The Supreme Court in *Thomas v. Arn*,

474 U.S. 140, 154 (1985), clarified that while the statute "does not on its face require any review at all... of any issue that is not the subject of an objection," this implies that issues subject to objection must be reviewed. As established in Section A, the UCL objection was timely filed. The district court's order neither dismissed, accepted, rejected, nor modified the magistrate's recommendation on the UCL claim. Pet. App. C, 010-021. That mandatory duty was never executed. The district court's complete silence on the timely UCL objection was a failure to execute that mandatory duty, in violation of Petitioner's constitutional right to a *de novo* determination by an Article III judge.

C. Respondent's Counsel Misleads This Court by Quoting the Second Circuit's Analysis Of The Magistrate's Recommendation And Attributing It As The District Court's Determination.

Respondent's counsel constructed Section C by quoting the Second Circuit's analysis of the magistrate's recommendation and attributing it as the district court's own UCL determination to mislead this Court that the district court's adoption of the magistrate judge's Report dismissing Petitioner's §17200 claim "was legally correct and did not violate 28 U.S.C. §626(b)(1)(C)." Resp. Br. 13. Respondent cites no sentence from that order showing the district court accepted, rejected, or modified the magistrate's UCL recommendation. That absence cannot be cured by mischaracterizing it as a correct outcome.

The magistrate's UCL analysis appears at Pet. App. D, 032-033. The district court's order contains no UCL analysis. Pet. App. C, 010-021. The Second Circuit's UCL analysis at Pet. App. A, 005-006 does not reference any district court UCL analysis because the district court performed none. The analytical chain runs from the magistrate directly to the Second Circuit, bypassing the district court entirely.

That analytical gap carries jurisdictional consequences. Petitioner established at petition pages 20 through 25 that the Second Circuit lacked jurisdiction under 28 U.S.C. section 1291 to affirm the UCL dismissal because section 1291 grants appellate courts jurisdiction over final decisions of district courts, not final decisions of magistrate judges. The section 1291 argument stands on this

D. Respondent Cannot Substitute His Brief For The De Novo Determination The District Court Never Performed. Pet. App. C, 010-021.

Respondent devotes pages 14 through 18 of the Response Brief to analyzing the UCL claim but has not cited a single sentence from Pet. App. C, 010-021 showing the district court accepted, rejected, or modified the magistrate's UCL recommendation. Section 636(b)(1)(C) assigned the de novo determination exclusively to the district court judge. That determination was mandatory but was not performed.

To justify that absence, Respondent misleadingly quotes half of the Raddatz holding, citing only the language that Congress intended to permit whatever reliance a district judge chose to place on a magistrate's findings, Resp. Br. 17-18, and omits the half that states "the ultimate determination is made by the district judge." 447 U.S. at 675. That omitted half is the operative one. It tracks §636(b)(1)(C), which is construed according to its terms to require an independent determination of contested issues by a judge of the district court. Raddatz does not authorize that absence.

The district court's order neither accepted, rejected, nor modified the magistrate's recommendation on the UCL claim. Pet. App. C, 010-021. The word "shall" in §636(b)(1)(C) admits no exception. The district court's silence on the

UCL claim was a failure to execute the mandatory duty §636(b)(1)(C) imposes, in violation of Petitioner's constitutional right to a de novo determination by an Article III judge.

E. Respondent's Erie Argument Confirms That The District Court Never Discharged Its Mandatory Duty Under Section 636(b)(1)(C)

Respondent argues at pages 18 through 19 of his Brief that there is no Erie violation because neither Banga I nor Banga II addressed the statute of limitations for the UCL claim, and therefore the district court was not required to follow them as controlling California authority. That argument misframes the petition and in doing so concedes the question this petition does ask. Whether Banga I and Banga II control the limitations issue is an Erie merits determination. Section 636(b)(1)(C) assigns that determination to the district court, not to the Court of Appeals, and not to Respondent in a brief to this Court. By defending the outcome on the merits, Respondent tacitly accepts that the district court never reached them. The order contains no UCL analysis. Pet. App. C, 010-021.

Petitioner's timely Objection No. 4, ECF No. 59, made the Erie determination unavoidable. It tracked Banga I, cited the California Court of Appeal's October 1, 2019 authorization of the UCL claim, and identified the four-year limitations period Erie makes controlling. Supp. App. BANGA-APP-069 to 071. Once that objection was filed, §636(b)(1)(C) required the district court to decide whether the cited California authority controlled. The statute gave the district court three options: accept, reject, or modify. It exercised none.

Respondent filed no opposition to that objection. The statutory duty ran regardless. Thomas v. Arn, 474 U.S. 140, 150 (1985). That duty exists because Article III, §1 vests the judicial power exclusively in Article III judges; §636(b)(1)(C) is the mechanism by which Congress ensured magistrates do not exercise it.

F. Petitioner's UCL Objections Remain Outstanding And Respondent Misconstrues The Authorities That Define What Mandatory De Novo Review Requires.

Petitioner cites *Chandler v. Roudebush*, 425 U.S. 840, 861-862 (1976), and *United States v. First City National Bank*, 386 U.S. 361, 368 (1967), to establish the principle that de novo means an independent determination of the issues. Respondent conceded that section 636(b)(1)(C) mandates de novo determination of timely objections. Resp. Br. 11. That concession confirms the principle. Respondent cannot now argue that these authorities are inapplicable.

As established in Section A, Petitioner's UCL objections remain outstanding. Because jurisdiction over this case was vested in an Article III federal district court, Petitioner was entitled to the constitutional safeguards of that forum. 28 U.S.C. §636(b)(1)(B). A magistrate judge's recommendation is not final and does not dispose of a party's claims until the district court makes it final. *United States v. Cooper, supra*. The district court's silence on Petitioner's timely UCL objection permitted a non-Article III recommendation to become final on a contested claim without any determination by an Article III judge. That is precisely the encroachment on Article III power that the Constitution prohibits. *United States ex rel. Toth v. Quarles*, 350 U.S. 11, 15-16 (1955); *Reid v. Covert*, 354 U.S. 1, 21-22, 44, 70 (1957).

CONCLUSION

For the foregoing reasons, and based on the arguments presented in the petition and this reply, Petitioner Kamlesh Banga respectfully requests that this Court grant the petition for a writ of certiorari, vacate the judgment below, and remand for de novo review of Petitioner's timely UCL objection.

Respectfully submitted,

Dated: April 18, 2026

By: Kamlesh Banga
Kamlesh Banga
PETITIONER IN PRO PER